

# OFFICIAL CODE OF GEORGIA ANNOTATED

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# TITLE 31

## HEALTH

Chap.

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## CHAPTER 2

### DEPARTMENT OF COMMUNITY HEALTH

Sec.

31-2-9. Records check requirement for certain facilities; definitions; use of information gathered in

Sec.

investigation; penalties for unauthorized release or disclosure; rules and regulations.

**31-2-9. Records check requirement for certain facilities; definitions; use of information gathered in investigation; penalties for unauthorized release or disclosure; rules and regulations.**

(a) As used in this Code section, the term:

(1) “Conviction” means a finding or verdict of guilty or a plea of guilty regardless of whether an appeal of the conviction has been sought.

(2) “Crime” means commission of the following offenses:

(A) A violation of Code Section 16-5-1, relating to murder and felony murder;

(B) A violation of Code Section 16-5-21, relating to aggravated assault;

(C) A violation of Code Section 16-5-24, relating to aggravated battery;

(D) A violation of Code Section 16-5-70, relating to cruelty to children;

- (E) A violation of Article 8 of Chapter 5 of Title 16;
  - (F) A violation of Code Section 16-6-1, relating to rape;
  - (G) A violation of Code Section 16-6-2, relating to aggravated sodomy;
  - (H) A violation of Code Section 16-6-4, relating to child molestation;
  - (I) A violation of Code Section 16-6-5, relating to enticing a child for indecent purposes;
  - (J) A violation of Code Section 16-6-5.1, relating to sexual assault against persons in custody, detained persons, or patients in hospitals or other institutions;
  - (K) A violation of Code Section 16-6-22.2, relating to aggravated sexual battery;
  - (L) A violation of Code Section 16-8-41;
  - (M) Any other offense committed in another jurisdiction that, if committed in this state, would be deemed to be a crime listed in this paragraph without regard to its designation elsewhere; or
  - (N) Any other criminal offense as determined by the department and established by rule adopted pursuant to Chapter 13 of Title 50, the “Georgia Administrative Procedure Act,” that would indicate the unfitness of an individual to provide care to or be in contact with persons residing in a facility.
- (3) “Criminal record” means any of the following:
- (A) Conviction of a crime;
  - (B) Arrest, charge, and sentencing for a crime where:
    - (i) A plea of nolo contendere was entered to the charge;
    - (ii) First offender treatment without adjudication of guilt pursuant to the charge was granted; or
    - (iii) Adjudication or sentence was otherwise withheld or not entered on the charge; or
  - (C) Arrest and being charged for a crime if the charge is pending, unless the time for prosecuting such crime has expired pursuant to Chapter 3 of Title 17.
- (4) “Facility” means a:
- (A) Personal care home required to be licensed or permitted under Code Section 31-7-12;

(B) Assisted living community required to be licensed under Code Section 31-7-12.2;

(C) Private home care provider required to be licensed under Article 13 of Chapter 7 of this title; or

(D) Community living arrangement subject to licensure under paragraph (8) of subsection (d) of Code Section 31-2-4.

(5) "GCIC" means the Georgia Crime Information Center established under Article 2 of Chapter 3 of Title 35.

(6) "GCIC information" means criminal history record information as defined in Code Section 35-3-30.

(7) "License" means the document issued by the department to authorize the facility to operate.

(8) "Owner" means any individual or any person affiliated with a corporation, partnership, or association with 10 percent or greater ownership interest in a facility providing care to persons under the license of the facility in this state and who:

(A) Purports to or exercises authority of the owner in a facility;

(B) Applies to operate or operates a facility;

(C) Maintains an office on the premises of a facility;

(D) Resides at a facility;

(E) Has direct access to persons receiving care at a facility;

(F) Provides direct personal supervision of facility personnel by being immediately available to provide assistance and direction during the time such facility services are being provided; or

(G) Enters into a contract to acquire ownership of a facility.

(9) "Records check application" means fingerprints in such form and of such quality as prescribed by the Georgia Crime Information Center and under standards adopted by the Federal Bureau of Investigation and a records search fee to be established by the department by rule and regulation, payable in such form as the department may direct to cover the cost of obtaining criminal background information pursuant to this Code section.

(b) An owner with a criminal record shall not operate or hold a license to operate a facility, and the department shall revoke the license of any owner operating a facility or refuse to issue a license to any owner operating a facility if it determines that such owner has a criminal record; provided, however, that an owner who holds a license to operate a facility on or before June 30, 2007, shall not have his or her



license revoked prior to a hearing being held before a hearing officer pursuant to Chapter 13 of Title 50, the “Georgia Administrative Procedure Act.”

(c)(1) Prior to approving any license for a new facility and periodically as established by the department by rule and regulation, the department shall require an owner to submit a records check application. The department shall establish a uniform method of obtaining an owner’s records check application.

(2)(A) Unless the department contracts pursuant to subparagraph (B) of this paragraph, the department shall transmit to the GCIC the fingerprints and records search fee from each fingerprint records check application in accordance with Code Section 35-3-35. Upon receipt thereof, the GCIC shall promptly transmit the fingerprints to the Federal Bureau of Investigation for a search of bureau records and an appropriate report and shall promptly conduct a search of its records and records to which it has access. Within ten days after receiving fingerprints acceptable to the GCIC and the fee, the GCIC shall notify the department in writing of any criminal record or if there is no such finding. After a search of Federal Bureau of Investigation records and fingerprints and upon receipt of the bureau’s report, the department shall make a determination about an owner’s criminal record and shall notify the owner in writing as to the department’s determination as to whether the owner has or does not have a criminal record.

(B) The department may either perform criminal background checks under agreement with the GCIC or contract with the GCIC and appropriate law enforcement agencies which have access to GCIC and Federal Bureau of Investigation information to have those agencies perform for the department criminal background checks for owners. The department or the appropriate law enforcement agencies may charge reasonable fees for performing criminal background checks.

(3)(A) The department’s determination regarding an owner’s criminal record, or any action by the department revoking or refusing to grant a license based on such determination, shall constitute a contested case for purposes of Chapter 13 of Title 50, the “Georgia Administrative Procedure Act,” except that any hearing required to be held pursuant thereto may be held reasonably expeditiously after such determination or action by the department.

(B) In a hearing held pursuant to subparagraph (A) of this paragraph or subsection (b) of this Code section, the hearing officer shall consider in mitigation the length of time since the crime was committed, the absence of additional criminal charges, the circum-

stances surrounding the commission of the crime, other indicia of rehabilitation, the facility's history of compliance with the regulations, and the owner's involvement with the licensed facility in arriving at a decision as to whether the criminal record requires the denial or revocation of the license to operate the facility. Where a hearing is required, at least 30 days prior to such hearing, the hearing officer shall notify the office of the prosecuting attorney who initiated the prosecution of the crime in question in order to allow the prosecutor to object to a possible determination that the conviction would not be a bar for the grant or continuation of a license as contemplated within this Code section. If objections are made, the hearing officer shall take such objections into consideration in considering the case.

(4) Neither the GCIC, the department, any law enforcement agency, nor the employees of any such entities shall be responsible for the accuracy of information nor have any liability for defamation, invasion of privacy, negligence, or any other claim in connection with any dissemination of information or determination based thereon pursuant to this Code section.

(d) All information received from the Federal Bureau of Investigation or the GCIC shall be for the exclusive purpose of approving or denying the granting of a license to a new facility or the revision of a license of an existing facility when a new owner is proposed and shall not be released or otherwise disclosed to any other person or agency. All such information collected by the department shall be maintained by the department pursuant to laws regarding and the rules or regulations of the Federal Bureau of Investigation and the GCIC, as is applicable. Penalties for the unauthorized release or disclosure of any such information shall be as prescribed pursuant to laws regarding and rules or regulations of the Federal Bureau of Investigation and the GCIC, as is applicable.

(e) The requirements of this Code section are supplemental to any requirements for a license imposed by Article 3 of Chapter 5 of Title 49 or Article 11 of Chapter 7 of this title.

(f) The department shall promulgate written rules and regulations to implement the provisions of this Code section. (Code 1981, § 31-2-14, enacted by Ga. L. 2009, p. 453, § 1-1/HB 228; Ga. L. 2010, p. 878, § 31/HB 1387; Ga. L. 2011, p. 227, § 10/SB 178; Code 1981, § 31-2-9, as redesignated by Ga. L. 2011, p. 705, § 4-4/HB 214; Ga. L. 2012, p. 351, § 2/HB 1110; Ga. L. 2013, p. 524, § 3-2/HB 78.)

**The 2013 amendment**, effective July 1, 2013, rewrote subparagraph (a)(2)(E); substituted "or" for "and"; relating to armed robbery" at the end of subparagraph

(a)(2)(L); deleted former subparagraph (a)(2)(M), which read: "A violation of Code Section 30-5-8, relating to abuse, neglect, or exploitation of a disabled adult or elder

person;” and redesignated former subparagraph (a)(2)(N) as present subparagraph (a)(2)(M).

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2013, “or” was

deleted at the end of subparagraph (a)(2)(L); “; or” was substituted for a period at the end of subparagraph (a)(2)(M); and subparagraph (a)(2)(O) was redesignated as subparagraph (a)(2)(N).

## CHAPTER 6

### STATE HEALTH PLANNING AND DEVELOPMENT

#### ARTICLE 3

#### CERTIFICATE OF NEED PROGRAM

#### 31-6-40. Certificate of need required for new institutional health services; exemption.

#### JUDICIAL DECISIONS

##### **Exhaustion of administrative remedies.**

Because the Georgia Society of Ambulatory Surgical Centers represented the interests of members that had adequate administrative remedies, and those members had not exhausted those remedies, the trial court was required to dismiss its case alleging that an annual survey the Georgia Department of Community Health (DCH) issued to ambulatory surgery centers (ASC) sought information beyond the scope of O.C.G.A. § 31-6-70.

Furthermore, the procedures set forth in the Georgia Administrative Procedure Act, O.C.G.A. § 50-13-19 and O.C.G.A. §§ 31-6-40(c), and 31-6-47(18), and Ga. Comp. R. & Regs. 111-2-2-.05(2)(e) were available to ACSs before DCH took any final adverse action against them for failing to provide the required survey information, the procedures afforded adequate administrative remedies to aggrieved ACSs. *Ga. Soc’y of Ambulatory Surgery Ctrs. v. Ga. Dep’t of Cmty. Health*, 316 Ga. App. 433, 729 S.E.2d 565 (2012).

#### 31-6-42. Qualifications for issuance of certificate.

**Law reviews.** — For annual survey on administrative law, see 64 Mercer L. Rev. 39 (2012).

#### 31-6-47. Exemptions from chapter.

#### JUDICIAL DECISIONS

##### **Exhaustion of administrative remedies.**

Because the Georgia Society of Ambulatory Surgical Centers represented the interests of members that had adequate

administrative remedies, and those members had not exhausted those remedies, the trial court was required to dismiss its case alleging that an annual survey the Georgia Department of Community



Health (DCH) issued to ambulatory surgery centers (ASC) sought information beyond the scope of O.C.G.A. § 31-6-70. Furthermore, the procedures set forth in the Georgia Administrative Procedure Act, O.C.G.A. § 50-13-19 and O.C.G.A. §§ 31-6-40(c), and 31-6-47(18), and Ga. Comp. R. & Regs. 111-2-2-.05(2)(e) were available to ASCs before DCH took any final adverse action against them for failing to provide the required survey information, the procedures afforded adequate administrative remedies to aggrieved ASCs. Ga. Soc’y of Ambulatory Surgery Ctrs. v. Ga. Dep’t of Cmty. Health, 316 Ga. App. 433, 729 S.E.2d 565 (2012).

ARTICLE 4

REPORTS

31-6-70. Reports to the department by certain health care facilities and all ambulatory surgical centers and imaging centers.

Law reviews. — For annual survey on administrative law, see 64 Mercer L. Rev. 39 (2012).

JUDICIAL DECISIONS

Exhaustion of administrative remedies.

Because the Georgia Society of Ambulatory Surgical Centers represented the interests of members that had adequate administrative remedies, and those members had not exhausted those remedies, the trial court was required to dismiss its case alleging that an annual survey the Georgia Department of Community Health (DCH) issued to ambulatory surgery centers (ASC) sought information beyond the scope of O.C.G.A. § 31-6-70.

Furthermore, the procedures set forth in the Georgia Administrative Procedure Act, O.C.G.A. § 50-13-19 and O.C.G.A. §§ 31-6-40(c), and 31-6-47(18), and Ga. Comp. R. & Regs. 111-2-2-.05(2)(e) were available to ASCs before DCH took any final adverse action against them for failing to provide the required survey information, the procedures afforded adequate administrative remedies to aggrieved ASCs. Ga. Soc’y of Ambulatory Surgery Ctrs. v. Ga. Dep’t of Cmty. Health, 316 Ga. App. 433, 729 S.E.2d 565 (2012).

CHAPTER 7

REGULATION AND CONSTRUCTION OF HOSPITALS AND OTHER HEALTH CARE FACILITIES

Article 1		Sec.	
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ects; rates and charges; utilization of revenues to pay certain obligations.	<b>Nursing Homes Employee Records Checks</b>
<b>Article 11</b>	Sec.
<b>Facility Licensing and Employee Records Checks</b>	31-7-350. Definitions.
31-7-250. Definitions.	

ARTICLE 1

REGULATION OF HOSPITALS AND RELATED INSTITUTIONS

**31-7-19. Nursing homes to annually offer influenza vaccinations to health care workers and other employees; immunity from liability.**

(a) Each nursing home shall annually offer on site to its health care workers and other employees who have direct contact with patients, at no cost, vaccinations for the influenza virus in accordance with the recommendations of the Centers for Disease Control and Prevention, subject to availability of the vaccine. Each nursing home shall keep on record a signed statement from each such health care worker and employee stating that he or she has been offered vaccination against the influenza virus and has either accepted or declined such vaccination. A nursing home may offer to its health care workers and other employees who have direct contact with patients any other vaccination required or recommended by, and in accordance with the recommendations of, the Centers for Disease Control and Prevention, which may be offered or administered pursuant to standing orders approved by the nursing home’s medical staff to ensure the safety of employees, patients, visitors, and contractors.

(b) A nursing home or health care provider acting in good faith and in accordance with generally accepted health care standards applicable to such nursing home or health care provider shall not be subject to administrative, civil, or criminal liability or to discipline for unprofessional conduct for complying with the requirements of this Code section. (Code 1981, § 31-7-19, enacted by Ga. L. 2013, p. 783, § 1/HB 208.)

**Effective date.** — This Code section became effective July 1, 2013.

**ARTICLE 4**

**COUNTY AND MUNICIPAL HOSPITAL AUTHORITIES**

**31-7-72. Creation of hospital authority in each county and municipality.**

**JUDICIAL DECISIONS**

**ANALYSIS**

**GENERAL CONSIDERATION**

**General Consideration**

**Cited** in United States v. Hosp. Auth. of  
Charlton County (In re Hosp. Auth. of

Charlton County), 56 Bankr. Ct. Dec.  
(LRP) 220 (Bankr. S.D. Ga. July 3, 2012).

**31-7-74. Residency requirement; officers; compensation; rules and regulations.**

**JUDICIAL DECISIONS**

**Cited** in United States v. Hosp. Auth. of  
Charlton County (In re Hosp. Auth. of

Charlton County), 56 Bankr. Ct. Dec.  
(LRP) 220 (Bankr. S.D. Ga. July 3, 2012).

**31-7-75. Functions and powers.**

**JUDICIAL DECISIONS**

**Cited** in United States v. Hosp. Auth. of  
Charlton County (In re Hosp. Auth. of

Charlton County), 56 Bankr. Ct. Dec.  
(LRP) 220 (Bankr. S.D. Ga. July 3, 2012).

**31-7-77. Prohibition on for-profit projects; rates and charges; utilization of revenues to pay certain obligations.**

(a) No authority shall operate or construct any project for profit. It shall fix rates and charges consistent with this declaration of policy and such as will produce revenues only in amounts sufficient, together with all other funds of the authority, to pay principal and interest on certificates and obligations of the authority, to provide for maintenance and operation of the project, and to create and maintain a reserve sufficient to meet principal and interest payments due on any certificates in any one year after the issuance thereof. The authority may provide reasonable reserves for the improvement, replacement, or expansion of its facilities or services.

(b) Notwithstanding subsection (a) of this Code section or any other provisions to the contrary, a joint hospital authority established pursuant to Code Section 31-7-72 which operates a hospital containing more than 900 licensed beds shall only utilize revenues to pay principal and

interest on certificates and obligations of the authority, to pay pension plan obligations of the authority existing as of January 1, 2013, and for funding projects leased by the authority to a lessee pursuant to a contract entered into in accordance with paragraph (7) of Code Section 31-7-75; provided, however, that no more than 1 percent of revenues shall be utilized to pay for personnel costs for employees or contractors of the authority. (Ga. L. 1941, p. 241, § 6; Code 1933, § 88-1806, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 2013, p. 1037, § 1/SB 62.)

**The 2013 amendment**, effective May 7, 2013, designated the existing provisions as subsection (a); and added subsection (b).

JUDICIAL DECISIONS

**Cited in** United States v. Hosp. Auth. of Charlton County), 56 Bankr. Ct. Dec. Charlton County (In re Hosp. Auth. of (LRP) 220 (Bankr. S.D. Ga. July 3, 2012).

**31-7-79. Liability on revenue certificates; tax exemption.**

JUDICIAL DECISIONS

**Cited in** United States v. Hosp. Auth. of Charlton County), 56 Bankr. Ct. Dec. Charlton County (In re Hosp. Auth. of (LRP) 220 (Bankr. S.D. Ga. July 3, 2012).

**31-7-84. Payment for authority’s services and facilities; levy of tax by political subdivisions; compliance by authority with county budgetary procedures.**

JUDICIAL DECISIONS

**Cited in** United States v. Hosp. Auth. of Charlton County), 56 Bankr. Ct. Dec. Charlton County (In re Hosp. Auth. of (LRP) 220 (Bankr. S.D. Ga. July 3, 2012).

**31-7-85. Contracts with political subdivisions.**

JUDICIAL DECISIONS

**Cited in** United States v. Hosp. Auth. of Charlton County), 56 Bankr. Ct. Dec. Charlton County (In re Hosp. Auth. of (LRP) 220 (Bankr. S.D. Ga. July 3, 2012).

**31-7-89. Procedure for dissolution; disposition of property.**

JUDICIAL DECISIONS

**Cited in** United States v. Hosp. Auth. of Charlton County), 56 Bankr. Ct. Dec. Charlton County (In re Hosp. Auth. of (LRP) 220 (Bankr. S.D. Ga. July 3, 2012).

ARTICLE 6  
PEER REVIEW GROUPS

**31-7-132. Immunity from liability for peer review activities; immunity from liability of persons providing information.**

JUDICIAL DECISIONS

**Hospital immune from liability because malice not established.**

Superior court erred in denying a hospital's motion for summary judgment in a doctor's action contending that the denial of an application for renewal of clinical privileges was void because the hospital was entitled to immunity from the doc-

tor's equitable claims pursuant to O.C.G.A. § 31-7-132(a); the superior court erred in finding that there was evidence from which the jury could infer that the peer review process was motivated by malice. *DeKalb Med. Ctr. v. Obekpa*, 315 Ga. App. 739, 728 S.E.2d 265 (2012).

**31-7-133. Confidentiality of review organization's records.**

**Cross references.** — Privileges generally, § 24-5-501 et seq.

ARTICLE 11

FACILITY LICENSING AND EMPLOYEE RECORDS CHECKS

**31-7-250. Definitions.**

As used in this article, the term:

(1) "Conviction" means a finding or verdict of guilty or a plea of guilty regardless of whether an appeal of the conviction has been sought.

(2) "Crime" means commission of any of the following offenses:

(A) A violation of Code Section 16-5-21, relating to aggravated assault;

(B) A violation of Code Section 16-5-24, relating to aggravated battery;

(C) A violation of Code Section 16-6-1, relating to rape;

(D) A felony violation of Code Section 16-8-2, relating to theft by taking;

(E) A felony violation of Code Section 16-8-3, relating to theft by deception;



(F) A felony violation of Code Section 16-8-4, relating to theft by conversion;

(G) A felony violation of Code Section 16-9-1;

(H) A violation of Code Section 16-5-1, relating to murder and felony murder;

(I) A violation of Code Section 16-4-1, relating to criminal attempt as it concerns attempted murder;

(J) A violation of Code Section 16-8-40, relating to robbery;

(K) A violation of Code Section 16-8-41, relating to armed robbery;

(L) A violation of Chapter 13 of Title 16, relating to controlled substances;

(M) A violation of Code Section 16-5-23.1, relating to battery;

(N) A violation of Code Section 16-6-5.1;

(O) A violation of Article 8 of Chapter 5 of Title 16;

(P) Any other offense committed in another jurisdiction which, if committed in this state, would be deemed to be such a crime without regard to its designation elsewhere; or

(Q) Any other criminal offense as determined by the department and established by rule adopted pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," that would indicate the unfitness of an individual to provide care to or be in contact with persons residing in a facility.

(3) "Criminal record" means any of the following:

(A) Conviction of a crime;

(B) Arrest, charge, and sentencing for a crime where:

(i) A plea of nolo contendere was entered to the charge;

(ii) First offender treatment without adjudication of guilt pursuant to the charge was granted; or

(iii) Adjudication or sentence was otherwise withheld or not entered on the charge; or

(C) Arrest and being charged for a crime if the charge is pending, unless the time for prosecuting such crime has expired pursuant to Chapter 3 of Title 17.

(3.1) "Department" means the Department of Community Health.

(4) “Director” means the chief administrative or executive officer or manager.

(5) “Employee” means any person, other than a director, utilized by a personal care home to provide personal services to any resident on behalf of the personal care home or to perform at any facilities of the personal care home any duties which involve personal contact between that person and any paying resident of the personal care home.

(6) “Facility” means real property of a personal care home where residents reside.

(7) “Fingerprint records check determination” means a satisfactory or unsatisfactory determination by the department based upon a records check comparison of GCIC information with fingerprints and other information in a records check application.

(8) “GCIC” means the Georgia Crime Information Center established under Article 2 of Chapter 3 of Title 35.

(9) “GCIC information” means criminal history record information as defined in Code Section 35-3-30.

(10) “License” means the permit or document issued by the department to authorize the personal care home to which it is issued to operate a facility under this chapter.

(11) “Personal care home” or “home” means a home required to be licensed or permitted under Code Section 31-7-12 or an assisted living community as defined in Code Section 31-7-12.2.

(11.1) “Personal services” includes, but is not limited to, individual assistance with or supervision of self-administered medication and essential activities of daily living such as eating, bathing, grooming, dressing, and toileting.

(12) “Preliminary records check application” means an application for a preliminary records check determination on forms provided by the department.

(13) “Preliminary records check determination” means a satisfactory or unsatisfactory determination by the department based only upon a comparison of GCIC information with other than fingerprint information regarding the person upon whom the records check is being performed.

(14) “Records check application” means two sets of classifiable fingerprints, a records search fee to be established by the department by rule and regulation, payable in such form as the department may direct to cover the cost of a fingerprint records check under this article, and an affidavit by the applicant disclosing the nature and

date of any arrest, charge, or conviction of the applicant for the violation of any law, except for motor vehicle parking violations, whether or not the violation occurred in this state, and such additional information as the department may require.

(15) “Regular license” means a permit which will remain in effect for the personal care home, until and unless the facility ceases to operate or revocation proceedings are commenced.

(16) “Satisfactory determination” means a written determination that a person for whom a records check was performed was found to have no criminal record.

(17) “Temporary license” means a provisional permit which expires six months or 12 months from the date of issuance, unless extended for good cause by the department.

(18) “Unsatisfactory determination” means a written determination that a person for whom a records check was performed has a criminal record. (Code 1981, § 31-7-250, enacted by Ga. L. 1985, p. 952, § 2; Ga. L. 1986, p. 822, § 1; Ga. L. 1994, p. 1359, § 1; Ga. L. 2002, p. 942, § 1; Ga. L. 2008, p. 12, § 2-19/SB 433; Ga. L. 2011, p. 227, § 17/SB 178; Ga. L. 2012, p. 351, § 4/HB 1110; Ga. L. 2012, p. 899, § 8-12/HB 1176; Ga. L. 2013, p. 524, § 3-3/HB 78.)

**The 2013 amendment**, effective July 1, 2013, deleted “, relating to sexual assault against a person in custody” following “Code Section 16-6-5.1” at the end of subparagraph (2)(N), and substituted “Article 8 of Chapter 5 of Title 16” for “Code

Section 30-5-8, relating to abuse, neglect, or exploitation of a disabled adult or elder person” in subparagraph (2)(O).

**Law reviews.** — For article on the 2012 amendment of this Code section, see 29 Ga. St. U.L. Rev. 290 (2012).

## ARTICLE 14

### NURSING HOMES EMPLOYEE RECORDS CHECKS

#### 31-7-350. Definitions.

As used in this article, the term:

(1) “Conviction” means a finding or verdict of guilty or a plea of guilty regardless of whether an appeal of the conviction has been sought.

(2) “Crime” means commission of an offense which constitutes a felony with respect to the following:

- (A) A violation of Code Section 16-5-21;
- (B) A violation of Code Section 16-5-24;
- (C) A violation of Code Section 16-6-1;

- (D) A violation of Code Section 16-8-2;
- (E) A violation of Code Section 16-8-3;
- (F) A violation of Code Section 16-8-4;
- (G) A violation of Code Section 16-5-1;
- (H) A violation of Code Section 16-4-1;
- (I) A violation of Code Section 16-8-40;
- (J) A violation of Code Section 16-8-41;
- (K) A felony violation of Code Section 16-9-1;
- (L) A violation of Article 8 of Chapter 5 of Title 16;
- (M) A violation of Chapter 13 of Title 16; or

(N) Any other offense committed in another jurisdiction which, if committed in this state, would be deemed to be such a crime without regard to its designation elsewhere.

(3) "Criminal record" means any of the following which have reached final disposition within ten years of the date the criminal record check is conducted:

- (A) Conviction of a crime;
- (B) Arrest, charge, and sentencing for a crime where:
  - (i) A plea of nolo contendere was entered to the charge;
  - (ii) First offender treatment without adjudication of guilt pursuant to the charge was granted; or
  - (iii) Adjudication or sentence was otherwise withheld or not entered on the charge; or

(C) Arrest and charges for a crime if the charge is pending, unless the time for prosecuting such crime has expired pursuant to Chapter 3 of Title 17.

(4) "Employment applicant" means any person seeking employment by a nursing home. This term shall not include persons employed by the nursing home prior to July 1, 1995.

(5) "GCIC" means the Georgia Crime Information Center established under Article 2 of Chapter 3 of Title 35.

(6) "Nursing home" or "home" means a home required to be licensed or permitted as a nursing home under the provisions of this chapter.

(7) "Satisfactory determination" means a written determination by a nursing home that a person for whom a record check was performed was found to have no criminal record.



(8) “Unsatisfactory determination” means a written determination by a nursing home that a person for whom a record check was performed was found to have a criminal record. (Code 1981, § 31-7-350, enacted by Ga. L. 1995, p. 570, § 1; Ga. L. 2001, p. 806, § 1; Ga. L. 2012, p. 899, § 8-13/HB 1176; Ga. L. 2013, p. 524, § 3-4/HB 78.)

**The 2013 amendment**, effective July 1, 2013, deleted “, relating to aggravated assault” following “Code Section 16-5-21” at the end of subparagraph (2)(A); deleted “, relating to aggravated battery” following “Code Section 16-5-24” at the end of subparagraph (2)(B); deleted “, relating to rape” following “Code Section 16-6-1” at the end of subparagraph (2)(C); deleted “, relating to theft by taking” following “Code Section 16-8-2” at the end of subparagraph (2)(D); deleted “, relating to theft by deception” following “Code Section 16-8-3” at the end of subparagraph (2)(E); deleted “, relating to theft by conversion” following “Code Section 16-8-4” at the end of subparagraph (2)(F); deleted “, relating to murder and felony murder” following “Code Section 16-5-1” at the end

of subparagraph (2)(G); deleted “, relating to criminal attempt as it concerns attempted murder” following “Code Section 16-4-1” at the end of subparagraph (2)(H); deleted “, relating to robbery” following “Code Section 16-8-40” at the end of subparagraph (2)(I); deleted “, relating to armed robbery” following “Code Section 16-8-41” at the end of subparagraph (2)(J); added subparagraph (2)(L); redesignated former subparagraphs (2)(L) and (2)(M) as present subparagraphs (2)(M) and (2)(N), respectively; and deleted “, relating to controlled substances” following “Title 16” at the end of subparagraph (2)(M).

**Law reviews.** — For article on the 2012 amendment of this Code section, see 29 Ga. St. U.L. Rev. 290 (2012).

## ARTICLE 15

### HOSPITAL ACQUISITION

#### 31-7-401. Notice to Attorney General of acquisition.

#### JUDICIAL DECISIONS

**Promissory estoppel did not apply.** — When a facilities owner did not sign an asset sale agreement, a hospital’s promissory estoppel claim failed because the parties’ letter of intent coupled with the hospital’s representation in a premerger notification that the parties would not execute a “binding asset sale agreement” until the Georgia Attorney General approved the agreement established as a matter of law that the hospital could not reasonably rely on the facilities owner’s “promise” to purchase the hospital assets. *St. Joseph Hosp., Augusta, Ga., Inc. v. Health Mgmt. Assocs.*, 705 F.3d 1289 (11th Cir. 2013).

**Breach of contract.** — When a facilities owner did not sign an asset sale agreement, a hospital’s breach of contract claim failed because, *inter alia*, the parties’ letter of intent did not incorporate the terms of the asset sale agreement and made clear that those terms were provisional, there was no evidence that the parties agreed to be bound by the terms of the asset sale agreement and, by filing premerger notifications, the parties represented as true that the asset sale agreement would not become a binding, enforceable contract until signed by the parties, and that the letter of intent superseded any written or oral agreements



that may have existed. *St. Joseph Hosp., Augusta, Ga., Inc. v. Health Mgmt. Assocs.*, 705 F.3d 1289 (11th Cir. 2013).

**31-7-402. Content and form of notice to Attorney General; retention of experts; payment of costs and expenses.**

**Law reviews.** — For article on the 2012 amendment of this Code section, see 29 Ga. St. U.L. Rev. 139 (2012).

**31-7-405. Public hearing; expert or consultant required to testify; testimony; representative of acquiring entity to testify.**

**Law reviews.** — For article on the 2012 amendment of this Code section, see 29 Ga. St. U.L. Rev. 139 (2012).

JUDICIAL DECISIONS

**Breach of contract.** — When a facilities owner did not sign an asset sale agreement, a hospital’s breach of contract claim failed because, inter alia, the parties’ letter of intent did not incorporate the terms of the asset sale agreement and made clear that those terms were provisional, there was no evidence that the parties agreed to be bound by the terms of the asset sale agreement and, by filing

premerger notifications, the parties represented as true that the asset sale agreement would not become a binding, enforceable contract until signed by the parties, and that the letter of intent superseded any written or oral agreements that may have existed. *St. Joseph Hosp., Augusta, Ga., Inc. v. Health Mgmt. Assocs.*, 705 F.3d 1289 (11th Cir. 2013).

CHAPTER 8

CARE AND PROTECTION OF INDIGENT AND ELDERLY PATIENTS

Article 4		Article 6C	
Reporting Abuse or Exploitation of Residents in Long-term Care Facilities		Hospital Medicaid Financing Program	
Sec.		Sec.	
31-8-81.	Definitions.	31-8-179.	(Repealed effective June 30, 2017) Short title.
31-8-82.	Persons required to report abuse or exploitation; time for making report; contents of report; records; privileged communications.	31-8-179.1.	(Repealed effective June 30, 2017) Definitions.
		31-8-179.2.	(Repealed effective June 30, 2017) Department of Community Health authorized to assess one or more provider pay-
31-8-86.	Confidentiality.		

Sec.		Sec.	
	ments on hospitals for the purpose of obtaining federal financial participation for Medicaid.		position; officers; terms of office; duties and responsibilities; assistance from other state officers and agencies; compensation, per diem, and expense allowances; funding.
31-8-179.3.	(Repealed effective June 30, 2017) Provider payments assessed to be deposited in segregated accounts within Indigent Care Trust Fund; sole purpose of funds to obtain federal financial participation for medical assistance payments for Medicaid recipients; retention and inspection of records; penalties.		
31-8-179.4.	(Repealed effective June 30, 2017) Authorized use of appropriated funds.		
31-8-179.5.	(Repealed effective June 30, 2017) Applicability of Georgia Medical Assistance Act.		
31-8-179.6.	(Repealed effective June 30, 2017) Termination date.		

Article 9

Federal and State Funded Health Care Financing Programs Overview Committee

31-8-210. Committee established; com-

Article 10  
Georgia Alzheimer's and Related Dementias State Plan Task Force

- 31-8-300. Legislative findings and intent.
- 31-8-301. Creation; purpose.
- 31-8-302. Composition; chairperson and other officers; advisory members.
- 31-8-303. Meetings; quorum; members to serve without compensation; administrative support; expense allowances; funding.
- 31-8-304. Comprehensive state plan to address Alzheimer's and related dementias; powers, duties, and responsibilities.
- 31-8-305. Georgia Alzheimer's and Related Dementias Advisory Council.
- 31-8-306. Abolishment.

ARTICLE 4

REPORTING ABUSE OR EXPLOITATION OF RESIDENTS IN LONG-TERM CARE FACILITIES

31-8-81. Definitions.

As used in this article, the term:

- (1) "Abuse" means any intentional or grossly negligent act or series of acts or intentional or grossly negligent omission to act which causes injury to a resident, including, but not limited to, assault or battery, failure to provide treatment or care, or sexual harassment of the resident.
- (1.1) "Department" means the Department of Community Health.
- (2) "Exploitation" means the illegal or improper use of a resident or the resident's resources through undue influence, coercion, harassment, duress, deception, false representation, false pretense, or other similar means for one's own or another's profit or advantage.

(3) “Long-term care facility” or “facility” means any skilled nursing home, intermediate care home, assisted living community, personal care home, or community living arrangement now or hereafter subject to regulation and licensure by the department.

(4) “Resident” means any person receiving treatment or care in a long-term care facility. (Code 1933, § 88-1902c, enacted by Ga. L. 1980, p. 1261, § 1; Ga. L. 2003, p. 558, § 4; Ga. L. 2007, p. 219, § 3/HB 233; Ga. L. 2011, p. 227, § 19/SB 178; Ga. L. 2011, p. 705, § 4-11/HB 214; Ga. L. 2013, p. 524, § 1-11/HB 78.)

**The 2013 amendment**, effective July 1, 2013, in paragraph (2), substituted “the illegal or improper use of a resident or the resident’s resources” for “an unjust or improper use of another person or the person’s property”; and inserted “or another’s” near the end.

**31-8-82. Persons required to report abuse or exploitation; time for making report; contents of report; records; privileged communications.**

(a) Any of the following people who have reasonable cause to believe that any resident or former resident has been abused or exploited while residing in a long-term care facility shall immediately make a report as described in subsection (d) of this Code section by telephone or in person to the department and shall make the report to the appropriate law enforcement agency or prosecuting attorney:

(1) Any person required to report child abuse as provided in subsection (c) of Code Section 19-7-5;

(2) Administrators, managers, or other employees of hospitals or long-term care facilities;

(3) Physical therapists;

(4) Occupational therapists;

(5) Day-care personnel;

(6) Coroners;

(7) Medical examiners;

(8) Emergency medical services personnel, as defined in Code Section 31-11-49;

(9) Any person who has been certified as an emergency medical technician, cardiac technician, paramedic, or first responder pursuant to Chapter 11 of Title 31;

(10) Employees of a public or private agency engaged in professional health related services to residents; and

(11) Clergy members.

(b) Persons required to make a report pursuant to subsection (a) of this Code section shall also make a written report to the department within 24 hours after making the initial report.

(c) Any other person who has knowledge that a resident or former resident has been abused or exploited while residing in a long-term care facility may report or cause a report to be made to the department or the appropriate law enforcement agency.

(d) A report of suspected abuse or exploitation shall include the following:

(1) The name and address of the person making the report unless such person is not required to make a report;

(2) The name and address of the resident or former resident;

(3) The name and address of the long-term care facility;

(4) The nature and extent of any injuries or the condition resulting from the suspected abuse or exploitation;

(5) The suspected cause of the abuse or exploitation; and

(6) Any other information which the reporter believes might be helpful in determining the cause of the resident's injuries or condition and in determining the identity of the person or persons responsible for the abuse or exploitation.

(e) The department shall maintain accurate records which shall include all reports of abuse or exploitation, the results of all investigations and administrative or judicial proceedings, and a summary of actions taken to assist the resident.

(f) Any suspected abuse or exploitation which is required to be reported by any person pursuant to this Code section shall be reported notwithstanding that the reasonable cause to believe such abuse or exploitation has occurred or is occurring is based in whole or in part upon any communication to that person which is otherwise made privileged or confidential by law; provided, however, that a member of the clergy shall not be required to report such matters confided to him or her solely within the context of confession or other similar communication required to be kept confidential under church doctrine or practice. When a clergy member receives information about abuse or exploitation from any other source, the clergy member shall comply with the reporting requirements of this Code section, even though the clergy member may have also received a report of such matters from the confession of the perpetrator. (Code 1933, § 88-1903c, enacted by Ga. L. 1980, p. 1261, § 1; Ga. L. 2009, p. 453, § 1-33/HB 228; Ga. L. 2013, p. 524, § 1-12/HB 78.)



The 2013 amendment, effective July 1, 2013, rewrote this Code section.

31-8-86. Confidentiality.

The identities of the resident, the alleged perpetrator, and persons making a report or providing information or evidence shall not be disclosed to the public unless required to be revealed in court proceedings or upon the written consent of the person whose identity is to be revealed or as otherwise required by law. Upon the resident's or his or her representative's request, the department shall make information obtained in an abuse report or complaint and an investigation available to an allegedly abused or exploited resident or his or her representative for inspection or duplication, except that such disclosure shall be made without revealing the identity of any other resident, the person making the report, or persons providing information by name or inference. For the purpose of this Code section, the term "representative" shall include any person authorized in writing by the resident or appointed by an appropriate court to act upon the resident's behalf. The term "representative" also shall include a family member of a deceased or physically or mentally impaired resident unable to grant authorization; provided, however, that such family members who do not have written or court authorization shall not be authorized by this Code section to receive the resident's health records as defined in Code Section 31-33-1. Nothing in this Code section shall be construed to deny agencies participating in joint investigations at the request of and with the department, or conducting separate investigations of abuse or exploitation within an agency's scope of authority, or law enforcement personnel who are conducting an investigation into any criminal offense in which a resident is a victim from having access to such records. (Code 1933, § 88-1908c, enacted by Ga. L. 1980, p. 1261, § 1; Ga. L. 1991, p. 1601, § 2; Ga. L. 2013, p. 524, § 1-13/HB 78.)

The 2013 amendment, effective July 1, 2013, twice inserted "or her" in the second sentence; inserted "that" in the fourth sentence; and added the last sentence.

ARTICLE 6C

HOSPITAL MEDICAID FINANCING PROGRAM

**Effective date.** — This article became effective February 13, 2013, for purposes of proposing rules and regulations and effective for all other purposes on July 1, 2013.

**Editor's notes.** — Ga. L. 2010, p. 9, § 2-1/HB 1055, effective June 30, 2013, repealed the Code sections formerly codi-

fied as this article. The former article consisted of Code Sections 31-8-179 and 31-8-179.1 through 31-8-179.8, relating to provider payment agreements, and was based on Code 1981, §§ 31-8-179—31-8-179.8, enacted by Ga. L. 2010, p. 9, § 2-1/HB 1055; Ga. L. 2011, p. 752, § 31/HB 142.



**31-8-179. (Repealed effective June 30, 2017) Short title.**

This article is enacted pursuant to the authority of Article III, Section IX, Paragraph VI(i) of the Constitution and shall be known and may be cited as the “Hospital Medicaid Financing Program Act.” (Code 1981, § 31-8-179, enacted by Ga. L. 2013, p. 1, § 1/SB 24.)

**31-8-179.1. (Repealed effective June 30, 2017) Definitions.**

As used in this article, the term:

- (1) “Board” means the Board of Community Health.
- (2) “Department” means the Department of Community Health.

(3) “Hospital” means an institution licensed pursuant to Chapter 7 of this title which is primarily engaged in providing to inpatients, by or under the supervision of physicians, diagnostic services and therapeutic services for medical diagnosis, treatment, and care of injured, disabled, or sick persons or rehabilitation services for the rehabilitation of injured, disabled, or sick persons. Such term includes public, private, rehabilitative, geriatric, osteopathic, and other specialty hospitals but shall not include psychiatric hospitals which shall have the same meaning as facilities as defined in paragraph (7) of Code Section 37-3-1, critical access hospitals as defined in paragraph (3) of Code Section 33-21A-2, or any state owned or state operated hospitals.

(4) “Provider payment” means a payment assessed by the department pursuant to this article for the privilege of operating a hospital. (Code 1981, § 31-8-179.1, enacted by Ga. L. 2013, p. 1, § 1/SB 24.)

**31-8-179.2. (Repealed effective June 30, 2017) Department of Community Health authorized to assess one or more provider payments on hospitals for the purpose of obtaining federal financial participation for Medicaid.**

(a) The board shall be authorized to establish and assess, by board rule, one or more provider payments on hospitals, or a subclass of hospitals, as defined by the board; provided, however, that if any such provider payment is established and assessed, the provider payment shall comply with the requirements of 42 CFR 433.68. Any provider payment assessed pursuant to this article shall not exceed the amount necessary to obtain federal financial participation allowable under Title XIX of the federal Social Security Act. The aggregate amount of any fees established and assessed pursuant to this subsection shall not exceed those percentages of net patient revenues set forth in the General

Appropriations Act. The board shall be authorized to discontinue any provider payment assessed pursuant to this article. The board shall cease to impose any such provider payment if:

(1) The provider payments are not eligible for federal matching funds under Title XIX of the federal Social Security Act; or

(2) The department reduces Medicaid payment rates to hospitals as are in effect on June 30, 2012 or reduces the provider payment rate adjustment factors utilized in developing the state Fiscal Year 2013 capitated rates for Medicaid managed care organizations.

(a.1) The General Assembly shall have the authority to override any provider payment assessed by the board pursuant to this Code section in accordance with the procedures contained in subsection (f) of Code Section 50-13-4.

(b) The board shall be authorized to establish rules and regulations to assess and collect any such provider payments, including, but not limited to, payment frequency and schedules, required information to be submitted, record retention, and whether any such provider payment shall be credited toward any indigent or charity care requirements or considered a community benefit. (Code 1981, § 31-8-179.2, enacted by Ga. L. 2013, p. 1, § 1/SB 24; Ga. L. 2013, p. 1037, § 2/SB 62.)

**The 2013 amendment**, effective May 7, 2013, in paragraph (a)(2), substituted “2012 or reduces” for “2012; reduces”, and deleted “; or alters any payment methodology, administrative rule, or payment policy as are in effect on June 30, 2012, or creates any new methodology, rule, or pol-

icy that has the effect of reducing Medicaid payments to hospitals” following “organizations” at the end.

**U.S. Code.** — Title XIX of the federal Social Security Act, referred to in this Code section, is codified at 42 U.S.C. § 1396 et seq.

**31-8-179.3. (Repealed effective June 30, 2017) Provider payments assessed to be deposited in segregated accounts within Indigent Care Trust Fund; sole purpose of funds to obtain federal financial participation for medical assistance payments for Medicaid recipients; retention and inspection of records; penalties.**

(a) Any provider payments assessed pursuant to this article shall be deposited into a segregated account for each payment program within the Indigent Care Trust Fund created pursuant to Code Section 31-8-152. No other funds shall be deposited into any such segregated account or accounts. All funds in any such segregated account or accounts shall be invested in the same manner as authorized for investing other moneys in the state treasury. Any funds deposited into a segregated account pursuant to this article shall be subject to appropriation by the General Assembly.

(b) Any provider payments assessed pursuant to this article shall be dedicated and used for the sole purpose of obtaining federal financial participation for medical assistance payments to providers on behalf of Medicaid recipients pursuant to Article 7 of Chapter 4 of Title 49.

(c) Each hospital shall keep and preserve for a period of seven years such books and records as may be necessary to determine the amount for which it is liable under this article. The department shall have the authority to inspect and copy the records of a hospital for purposes of auditing the calculation of the provider payment. All information obtained by the department pursuant to this article shall be confidential and shall not constitute a public record.

(d) The department shall be authorized to impose a penalty of up to 6 percent for any hospital that fails to pay a provider payment within the time required by the department for each month or fraction thereof that the provider payment is overdue. If a required provider payment has not been received by the department in accordance with department timelines, the department shall withhold an amount equal to the provider payment and penalty owed from any medical assistance payment due such hospital under the Medicaid program. Any provider payment assessed pursuant to this article shall constitute a debt due the state and may be collected by civil action and the filing of tax liens in addition to such methods provided for in this article. Any penalty that accrues pursuant to this subsection shall be credited to the applicable segregated account. (Code 1981, § 31-8-179.3, enacted by Ga. L. 2013, p. 1, § 1/SB 24.)

**31-8-179.4. (Repealed effective June 30, 2017) Authorized use of appropriated funds.**

(a) Notwithstanding any other provision of this chapter, the General Assembly is authorized to appropriate as state funds to the department for use in any fiscal year all revenues dedicated and deposited into one or more segregated accounts. Such appropriations shall be authorized to be made for the sole purpose of obtaining federal financial participation for medical assistance payments to providers on behalf of Medicaid recipients pursuant to Article 7 of Chapter 4 of Title 49. Any appropriation from a segregated account for any purpose other than such medical assistance payments shall be void.

(b) Revenues appropriated to the department pursuant to this Code section shall be used to match federal funds that are available for the purpose for which such funds have been appropriated.

(c) Appropriations from a segregated account to the department shall not lapse to the general fund at the end of the fiscal year. (Code 1981, § 31-8-179.4, enacted by Ga. L. 2013, p. 1, § 1/SB 24.)



**31-8-179.5. (Repealed effective June 30, 2017) Applicability of Georgia Medical Assistance Act.**

Except where inconsistent with this article, the provisions of Article 7 of Chapter 4 of Title 49, the “Georgia Medical Assistance Act of 1977,” shall apply to the department in carrying out the purposes of this article. (Code 1981, § 31-8-179.5, enacted by Ga. L. 2013, p. 1, § 1/SB 24.)

**31-8-179.6. (Repealed effective June 30, 2017) Termination date.**

This article shall stand repealed on June 30, 2017, unless reauthorized by the General Assembly prior to that date. (Code 1981, § 31-8-179.6, enacted by Ga. L. 2013, p. 1, § 1/SB 24.)

ARTICLE 9

FEDERAL AND STATE FUNDED HEALTH CARE FINANCING  
PROGRAMS OVERVIEW COMMITTEE

**Effective date.** — This article became effective May 7, 2013. of Chapter 8 of Title 31 as enacted by Ga. L. 2013, p. 586, § 1/SB 14, was redesignated as Article 10 of Chapter 8 of Title 31.

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2013, Article 9

**31-8-210. Committee established; composition; officers; terms of office; duties and responsibilities; assistance from other state officers and agencies; compensation, per diem, and expense allowances; funding.**

(a) There is created as a joint committee of the General Assembly the Federal and State Funded Health Care Financing Programs Overview Committee to be composed of one member of the House of Representatives appointed by the Speaker of the House; one member of the Senate appointed by the President of the Senate; the chairperson of the House Committee on Appropriations or his or her designee; the chairperson of the House Committee on Health and Human Services or his or her designee; the chairperson of the House Committee on Ways and Means or his or her designee; the chairperson of the Senate Appropriations Committee or his or her designee; the chairperson of the Senate Health and Human Services Committee or his or her designee; the chairperson of the Senate Finance Committee; and the minority leaders of the Senate and House of Representatives or their designees. The members of the committee shall serve two-year terms concurrent with their terms as members of the General Assembly. Beginning in 2013, and every four years thereafter, the chairperson of the committee shall be appointed by the President of the Senate from the membership of the committee, and the vice chairperson of the committee shall be ap-

pointed by the Speaker of the House of Representatives from the membership of the committee. Beginning in 2015, and every four years thereafter, the chairperson of the committee shall be appointed by the Speaker of the House of Representatives from the membership of the committee, and the vice chairperson of the committee shall be appointed by the President of the Senate from the membership of the committee. The chairperson and vice chairperson shall serve terms of two years concurrent with their terms as members of the General Assembly. Vacancies in an appointed member's position or in the offices of chairperson or vice chairperson of the committee shall be filled for the unexpired term in the same manner as the original appointment. The committee shall periodically inquire into and review the actions of the board and the department under this article to evaluate the success with which the board and the department are accomplishing the statutory duties and functions as provided in this article.

(b) The board and the department shall cooperate with the committee, its authorized personnel, the Attorney General, the state auditor, the state accounting officer, and other state agencies in order that the charges of the committee set forth in this Code section may be timely and efficiently discharged. The committee shall, on or before the first day of January of each year, and at such other times as it deems necessary, submit to the General Assembly a report of its findings and recommendations based upon the review of the board and the department as set forth in this Code section.

(c)(1) The members of the committee shall receive the same compensation, per diem, expenses, and allowances for their service on the committee as is authorized by law for members of interim legislative study committees.

(2) The funds necessary for the purposes of the committee shall come from the funds appropriated to and available to the legislative branch of government. (Code 1981, § 31-8-210, enacted by Ga. L. 2013, p. 1037, § 3/SB 62.)

## ARTICLE 10

### GEORGIA ALZHEIMER'S AND RELATED DEMENTIAS STATE PLAN TASK FORCE

**Effective date.** — This article became effective May 6, 2013.

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2013, Article 9

of Chapter 8 of Title 31 as enacted by Ga. L. 2013, p. 586, § 1/SB 14, was redesignated as Article 10 of Chapter 8 of Title 31.



**31-8-300. Legislative findings and intent.**

The General Assembly finds and declares that Alzheimer's disease is a looming national public health crisis and impacts every state. It is important for Georgia to assess its ability to provide appropriate and necessary programs and services to Georgia's citizens living with Alzheimer's disease and related dementias, and determine where Georgia is, where Georgia is doing well, where gaps may exist, and where the private sector, public sector, nonprofit and faith-based communities' resources may be leveraged to ensure that Georgia grows to be fully dementia capable. The General Assembly further finds that access to quality health care for Alzheimer's and related dementias and the rising cost of such care are vitally important to the citizens of Georgia. Therefore, the General Assembly has determined that it is in the best interests of the state and its citizenry to address this issue. (Code 1981, § 31-8-300, enacted by Ga. L. 2013, p. 586, § 1/SB 14.)

**31-8-301. Creation; purpose.**

There is created the Georgia Alzheimer's and Related Dementias State Plan Task Force for the purpose of studying and collecting information and data to assess the current and future impact of Alzheimer's disease on Georgia's citizens; to examine the existing industries, services, and resources addressing the needs of persons with Alzheimer's disease, their families, and caregivers; to review the National Alzheimer's Disease Plan currently under development by the federal Department of Health and Human Services; and to develop a strategy to mobilize a state response to Alzheimer's and related dementias as a public health crisis by creating a state plan. (Code 1981, § 31-8-301, enacted by Ga. L. 2013, p. 586, § 1/SB 14.)

**31-8-302. Composition; chairperson and other officers; advisory members.**

(a) The Georgia Alzheimer's and Related Dementias State Plan Task Force shall be composed of six members and shall include the director of the Division of Aging Services within the Department of Human Services, the commissioner of community health or his or her designee, the state health officer or his or her designee, the chairperson of the House Committee on the Health and Human Services, the chairperson of the Senate Health and Human Services Committee, and the chairperson of the House Committee on Human Relations and Aging.

(b) The director of the Division of Aging Services within the Department of Human Services shall serve as the chairperson of the task force. The task force may elect other officers as deemed necessary. The

chairperson of the task force may designate and appoint committees from among the membership of the task force as well as appoint other persons to perform such functions as he or she may determine to be necessary as relevant to and consistent with this article. The chairperson shall only vote to break a tie.

(c) The task force shall invite other advisory members to assist the committee and may consider the following in making its selection: a person with Alzheimer's disease; a person with Alzheimer's related dementia; such person's caregiver; a representative of the nursing facility industry; a representative from the adult day care services industry; a representative of the home health industry; a representative of the personal care home industry; a physician; a consultant pharmacist; an Alzheimer's disease and related dementias researcher; law enforcement personnel; and other stakeholders from the public, private, and nonprofit sectors, voluntary health organizations, and the faith-based community. (Code 1981, § 31-8-302, enacted by Ga. L. 2013, p. 586, § 1/SB 14.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2013, a mis-spelling of "physician" was corrected in subsection (c).

**31-8-303. Meetings; quorum; members to serve without compensation; administrative support; expense allowances; funding.**

(a) The task force shall hold meetings at the call of the chairperson.

(b) A quorum for transacting business shall be a majority of the members of the task force.

(c) The members of the task force shall serve without compensation.

(d) The Division of Aging Services within the Department of Human Services shall provide administrative support to the task force.

(e) Each legislative member of the task force shall receive the allowances provided for in Code Section 28-1-8. Citizen members shall receive a daily expense allowance in the amount specified in subsection (b) of Code Section 45-7-21 as well as the mileage or transportation allowance authorized for state employees. Any members of the task force who are state officials, other than legislative members, and state employees shall receive no compensation for their services on the task force, but they shall be reimbursed for expenses incurred by them in the performance of their duties as members of the task force in the same manner as they are reimbursed for expenses in their capacities as state officials or employees. The funds necessary for the reimbursement of the expenses of state officials, other than legislative members, and state employees shall come from funds appropriated to or otherwise available

to their respective departments. All other funds necessary to carry out the provisions of this article shall come from funds appropriated to the House of Representatives and the Senate. (Code 1981, § 31-8-303, enacted by Ga. L. 2013, p. 586, § 1/SB 14.)

**31-8-304. Comprehensive state plan to address Alzheimer's and related dementias; powers, duties, and responsibilities.**

(a) The purpose of the task force shall be to create a comprehensive state plan for Georgia to address Alzheimer's and related dementias and shall include, at a minimum:

(1) Trends in state Alzheimer's and related dementias population and needs, including the changing population with dementia, including, but not limited to:

(A) State role in long-term care, family caregiver support, and assistance to persons with early stage and early onset Alzheimer's disease;

(B) State policy regarding persons with Alzheimer's disease and developmental disabilities; and

(C) Ongoing periodic surveillance of persons with Alzheimer's disease for purposes of having proper estimates of the number of persons in the state with Alzheimer's disease, and for the development of a response to this chronic condition that has risen to the level of a public health crisis;

(2) Existing services, resources, and capacity, including but not limited to the:

(A) Type, cost, and availability of dementia services;

(B) Dementia-specific training requirements for long-term care staff;

(C) Quality care measures for long-term care facilities;

(D) Capacity of public safety and law enforcement to respond to persons with Alzheimer's disease;

(E) Availability of home- and community-based resources for persons with Alzheimer's disease and respite care to assist families;

(F) Inventory of long-term care dementia care units;

(G) Adequacy and appropriateness of geriatric-psychiatric units for persons with behavior disorders associated with Alzheimer's disease and related dementias;

(H) Assisted living residential options for persons with dementia;

(I) State support of Alzheimer's disease research through Georgia universities and other resources;

(J) Medical education, content, and quality of course offerings and requirements for dementia training provided to students in medical education programs at all levels of education within both state and private programs from emergency medical technician and nursing assistant programs through advanced medical specialties and medical continuing education;

(K) Inventory of federal agencies who provide funding, services, programs, or resources for individuals with Alzheimer's disease or a related dementia, caregivers, medical professionals, or professional care providers; and

(L) Gaps in services;

(3) Needed state policies or responses, including but not limited to directions for the provision of clear and coordinated services and support to persons and families living with Alzheimer's disease and related disorders and strategies to address any identified gaps in services;

(4) Ways in which state and local agencies, private sector, quasi-governmental, voluntary health organizations, the faith community, and nonprofit organizations can collaborate and work together to form a seamless network of education, support, and other needed services to those living with Alzheimer's disease and related dementias and their families; and

(5) Specific areas to addressed, including:

(A) Increasing awareness of Alzheimer's disease among the public;

(B) Encouraging increased detection and diagnosis of Alzheimer's disease;

(C) Improving the individual health care that those with Alzheimer's disease receive;

(D) Improving the quality of the health care system in serving people with Alzheimer's disease;

(E) Expanding the capacity of the health care system to meet the growing number and needs of those with Alzheimer's disease;

(F) Training and better equipping health care professionals and others to deal with individuals with Alzheimer's disease;



(G) Workforce development by increasing the number of health care professionals that will be necessary to treat the growing aging and Alzheimer's populations;

(H) Improving services provided in the home and community to delay and decrease the need for institutionalized care;

(I) Improving access to long-term care, including assisted living, for those with Alzheimer's disease;

(J) Assisting unpaid Alzheimer's caregivers;

(K) Increasing research on Alzheimer's disease;

(L) Promoting activities that would maintain and improve brain health;

(M) Creating a better system of data collection regarding Alzheimer's disease and its public health burden;

(N) Public safety and addressing the safety related needs of those with Alzheimer's disease, including in-home safety for those living at home, Mattie's Call and safety of those who wander or are found wandering but who need supervision until they can be reunited with their family or professional caregiver and driving safety, including assessments and taking the license away when a person with dementia is no longer capable of driving safely;

(O) Addressing legal protections for, and legal issues faced by, individuals with Alzheimer's disease; and

(P) Improving how state government evaluates and adopts policies to help people with Alzheimer's disease and their families; determination of which department of state government is the most appropriate agency to house the ongoing work of the Georgia Alzheimer's and Related Dementias State Plan Task Force as it convenes annually to ensure track and report progress as Georgia becomes a more dementia-capable state.

(b) The task force shall have the following powers:

(1) To hold public meetings and utilize technological means, such as webcasts, to gather feedback on the recommendations from persons and families affected by Alzheimer's disease and related dementias and from the general public;

(2) To request and receive data from and review the records of appropriate agencies and health care facilities to the greatest extent allowed by state and federal law;

(3) To accept public or private grants, devises, and bequests; and

(4) To enter into all contracts or agreements necessary or incidental to the performance of its duties.

(c) Prior to the final report required in subsection (d) of this Code section, the task force may advise on legislation and other recommended changes to the Governor and the General Assembly.

(d) The task force shall issue a state plan which shall include proposed legislation, if any, to the Governor and the General Assembly on or before March 31, 2014. (Code 1981, § 31-8-304, enacted by Ga. L. 2013, p. 586, § 1/SB 14.)

### **31-8-305. Georgia Alzheimer's and Related Dementias Advisory Council.**

(a) Upon the abolishment of the task force as provided by this article, there shall be created the Georgia Alzheimer's and Related Dementias Advisory Council.

(b) The advisory council membership shall include the same membership as the original task force as provided for in this article.

(c) The advisory council shall meet at least annually to review the progress of the state plan and to make any recommendations for changes, as well as recommend any legislation needed to implement the plan. (Code 1981, § 31-8-305, enacted by Ga. L. 2013, p. 586, § 1/SB 14.)

### **31-8-306. Abolishment.**

The task force shall stand abolished on March 31, 2014. (Code 1981, § 31-8-306, enacted by Ga. L. 2013, p. 586, § 1/SB 14.)

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## **CHAPTER 9**

### **CONSENT FOR SURGICAL OR MEDICAL TREATMENT**

**Cross references.** — Adult's reliance on prayer or religious nonmedical means of treatment of dependent, § 15-11-107.

#### **31-9-6.1. Disclosure of certain information to persons undergoing certain surgical or diagnostic procedures; failure to comply; exceptions; regulations establishing standards for implementation.**

**Law reviews.** — For annual survey on trial practice and procedure, see 64 Mercer L. Rev. 305 (2012).

CHAPTER 9A

WOMAN’S RIGHT TO KNOW

31-9A-2. Definitions.

**Law reviews.** — For article on the 2012 amendment of this Code section, see 29 Ga. St. U.L. Rev. 253 (2012).

31-9A-6.1. Civil and professional penalties for violations; prerequisites for seeking penalties.

**Law reviews.** — For article on the 2012 amendment of this Code section, see 29 Ga. St. U.L. Rev. 253 (2012).

CHAPTER 9B

PHYSICIAN’S OBLIGATION IN PERFORMANCE OF ABORTIONS

**Law reviews.** — For article on the 2012 enactment of this chapter, see 29 Ga. St. U.L. Rev. 253 (2012).

CHAPTER 11

EMERGENCY MEDICAL SERVICES

Article 3  
Personnel

Sec.  
31-11-51. Certification and recertifica-

Sec.  
tion of emergency medical technicians; rules and regulations; use of conviction data in licensing decisions.

ARTICLE 1  
GENERAL PROVISIONS

**31-11-8. Liability of persons rendering emergency care; liability of physicians advising ambulance service pursuant to Code Section 31-11-50; limitation to gratuitous services.**

**JUDICIAL DECISIONS**

**County and ambulance crew members entitled to immunity.**

In a case in which a plaintiff sued a county to recover for injuries that the plaintiff allegedly sustained when a county-operated ambulance was involved in a collision while transporting the plaintiff to a local hospital, the trial court correctly ruled that O.C.G.A. § 31-11-8 was controlling in the case and that the

county was entitled to statutory immunity thereunder; the undisputed evidence showed that the emergency medical technicians did not have access to an X-ray machine at the scene and could not accurately exclude the possibility that the plaintiff had internal injuries or fractures that required immediate care. *Anderson v. Tattnall County*, 318 Ga. App. 877, 734 S.E.2d 843 (2012).

ARTICLE 3

PERSONNEL

**31-11-51. Certification and recertification of emergency medical technicians; rules and regulations; use of conviction data in licensing decisions.**

(a) As used in this Code section, the term “conviction data” means a record of a finding or verdict of guilty or plea of guilty or plea of nolo contendere with regard to any crime, regardless of whether an appeal of the conviction has been sought.

(b) The board shall, by regulation, authorize the department to establish procedures and standards for the licensing of emergency medical services personnel. The department shall succeed to all rules and regulations, policies, procedures, and administrative orders of the composite board which were in effect on December 31, 2001, and which relate to the functions transferred to the department by this chapter. Such rules, regulations, policies, procedures, and administrative orders shall remain in effect until amended, repealed, superseded, or nullified by proper authority or as otherwise provided by law.

(c) In reviewing applicants for initial licensure of emergency medical services personnel, the department shall be authorized pursuant to this Code section to obtain conviction data with respect to such applicants for the purposes of determining the suitability of the applicant for licensure.



(d) The department shall by rule or regulation, consistent with the requirements of this subsection, establish a procedure for requesting a fingerprint based criminal history records check from the center and the Federal Bureau of Investigation. Fingerprints shall be in such form and of such quality as prescribed by the center and under standards adopted by the Federal Bureau of Investigation. Fees may be charged as necessary to cover the cost of the records search. An applicant may request that a criminal history records check be conducted by a state or local law enforcement agency or by a private vendor approved by the department. Fees for criminal history records checks shall be paid by the applicant to the entity processing the request at the time such request is made. The state or local law enforcement agency or private vendor shall remit payment to the center in such amount as required by the center for conducting a criminal history records check. The department shall accept a criminal history records check whether such request is made through a state or local law enforcement agency or through a private vendor approved by the department. Upon receipt of an authorized request, the center shall promptly cause such criminal records search to be conducted. The center shall notify the department in writing of any finding of disqualifying information, including, but not limited to, any conviction data regarding the fingerprint records check, or if there is no such finding.

(e) Conviction data received by the department or a state or local law enforcement agency shall be privileged and shall not be a public record or disclosed to any person. Conviction data shall be maintained by the department and the state or local law enforcement pursuant to laws regarding such records and the rules and regulations of the center and the Federal Bureau of Investigation. Penalties for the unauthorized release or disclosure of conviction data shall be as prescribed by law or rule or regulation of the center or Federal Bureau of Investigation.

(f) The center, the department, or any law enforcement agency, or the employees of any such entities, shall neither be responsible for the accuracy of information provided pursuant to this Code section nor be liable for defamation, invasion of privacy, negligence, or any other claim relating to or arising from the dissemination of information pursuant to this Code section. (Code 1933, § 88-3112.1, enacted by Ga. L. 1977, p. 281, § 2; Ga. L. 2001, p. 1145, § 2; Ga. L. 2011, p. 539, § 2/SB 76; Ga. L. 2012, p. 83, § 4/HB 247; Ga. L. 2013, p. 141, § 31/HB 79.)

**The 2013 amendment**, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, substituted “this

subsection” for “this paragraph” in the first sentence of subsection (d).

CHAPTER 17A

CONTROL OF HIV

**Cross references.** — Child committing delinquent act constituting AIDS transmission crime including testing and reporting, § 15-11-603. Confidential nature of AIDS information, § 24-12-20. Disclosure of AIDS confidential information, § 24-12-21.

CHAPTER 22

CLINICAL LABORATORIES

Sec.	Sec.
31-22-9.2. (For effective date, see note.) HIV tests — Report of positive results; counseling; violations;	exception for insurance coverage; exposure of health care provider.

31-22-9.1. HIV tests — Who may perform test.

**Cross references.** — Confidential nature of AIDS information, § 24-12-20.

31-22-9.2. (For effective date, see note.) HIV tests — Report of positive results; counseling; violations; exception for insurance coverage; exposure of health care provider.

(a) Any term used in this Code section and defined in Code Section 31-22-9.1 shall have the meaning provided for that term in Code Section 31-22-9.1.

(b) Reserved.

(c) (For effective date, see note.) Unless exempted under this Code section, each health care provider who orders an HIV test for any person shall do so only after counseling the person to be tested. Unless exempted under this subsection, the person to be tested shall have the opportunity to refuse the test. The provisions of this subsection shall not be required if the person is required to submit to an HIV test pursuant to Code Section 15-11-603, 17-10-15, 31-17-4.2, 31-17A-3, 42-5-52.1, or 42-9-42.1. The provisions of this subsection shall not be required if the person is a minor or incompetent and the parent or guardian thereof permits the test after compliance with this subsection. The provisions of this subsection shall not be required if the person is unconscious, temporarily incompetent, or comatose and the next of kin permits the test after compliance with this subsection. The provisions of this subsection shall not apply to emergency or life-threatening situa-

tions. The provisions of this subsection shall not apply if the physician ordering the test is of the opinion that the person to be tested is in such a medical or emotional state that disclosure of the test would be injurious to the person's health. The provisions of this subsection shall only be required prior to drawing the body fluids required for the HIV test and shall not be required for each test performed upon that fluid sample.

(d) The health care provider ordering an HIV test shall provide medically appropriate counseling to the person tested with regard to the test results. Such medically appropriate counseling shall only be required when the last confirmatory test has been completed.

(e) The criminal penalty provided in Code Section 31-22-13 shall not apply to a violation of subsection (c), (d), or (g) of this Code section. The statute of limitations for any action alleging a violation of this Code section shall be two years from the date of the alleged violation.

(f) The provisions of this Code section shall not apply to situations in which an HIV test is ordered or required in connection with insurance coverage, provided that the person to be tested or the appropriate representative of that person has agreed to have the test administered under such procedures as may be established by the Commissioner of Insurance after consultation with the Department of Community Health.

(g) Notwithstanding the other provisions of this Code section, when exposure of a health care provider to any body fluids of a patient occurs in such a manner as to create any risk that such provider might become an HIV infected person if the patient were an HIV infected person, according to current infectious disease guidelines of the Centers for Disease Control and Prevention or according to infectious disease standards of the health care facility where the exposure occurred, a health care provider otherwise authorized to order an HIV test shall be authorized to order any HIV test on such patient and obtain the results thereof:

(1) If the patient or the patient's representative, if the patient is a minor, otherwise incompetent, or unconscious, does not refuse the test after being notified that the test is to be ordered and after having been provided counseling and an opportunity to refuse the test; or

(2) If the patient or representative refuses the test, following compliance with paragraph (1) of this subsection, when at least one other health care provider who is otherwise authorized to order an HIV test concurs in writing to the testing, the patient is informed of the results of the test and is provided counseling with regard to those results, and the occurrence of that test is not made a part of the patient's medical records, where the test results are negative, with-

out the patient’s consent. (Code 1981, § 31-22-9.2, enacted by Ga. L. 1988, p. 1799, § 8; Ga. L. 1990, p. 705, §§ 2, 3; Ga. L. 2000, p. 20, § 20; Ga. L. 2006, p. 72, § 31/SB 465; Ga. L. 2007, p. 173, § 2/HB 429; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2013, p. 294, § 4-43/HB 242.)

**Delayed effective date.** — Subsection (c), as set out above, becomes effective January 1, 2014. For version of subsection (c) in effect until January 1, 2014, see the 2013 amendment note.

**The 2013 amendment,** effective January 1, 2014, substituted “Code Section 15-11-603” for “Code Section 15-11-66.1” in the third sentence of subsection (c). See editor’s note for applicability.

**Editor’s notes.** — Ga. L. 2013, p. 294, § 5-1/HB 242, not codified by the General Assembly, provides that: “This Act shall become effective on January 1, 2014, and

shall apply to all offenses which occur and juvenile proceedings commenced on and after such date. Any offense occurring before January 1, 2014, shall be governed by the statute in effect at the time of such offense and shall be considered a prior adjudication for the purpose of imposing a disposition that provides for a different penalty for subsequent adjudications, of whatever class, pursuant to this Act. The enactment of this Act shall not affect any prosecutions for acts occurring before January 1, 2014, and shall not act as an abatement of any such prosecutions.”

CHAPTER 40

TATTOO STUDIOS

31-40-1. Definitions.

RESEARCH REFERENCES

**ALR.** — Regulation of business of tattooing, 67 ALR6th 395.

31-40-5. Rules and regulations.

RESEARCH REFERENCES

**ALR.** — Regulation of business of tattooing, 67 ALR6th 395.



**CHAPTER 41****LEAD POISONING PREVENTION****Article 1****General Provisions**

Sec.

31-41-3. Definitions.

**ARTICLE 1****GENERAL PROVISIONS****31-41-3. Definitions.**

As used in this chapter, the term:

(1) “Abatement” means any set of measures designed to eliminate lead-based paint hazards, in accordance with standards developed by the board, including:

(A) Removal of lead-based paint and lead contaminated dust, the permanent containment or encapsulation of lead-based paint, the replacement of lead-painted surfaces or fixtures, and the removal or covering of lead contaminated soil; and

(B) All preparation, cleanup, disposal, and postabatement clearance testing activities associated with such measures.

(2) “Accessible surface” means an interior or exterior surface painted with lead-based paint that is accessible for a young child to mouth or chew.

(2.1) “Board” means the Board of Natural Resources of the State of Georgia.

(2.2) “Child-occupied facility” means a building or portion of a building constructed prior to 1978, visited by the same child, six years of age or under, on at least two different days within the same week (Sunday through Saturday period), provided that each day’s visit lasts at least three hours and the combined weekly visit lasts at least six hours. Child-occupied facilities include, but are not limited to, child care learning centers, preschools, and kindergarten facilities.

(3) “Department” means the Department of Natural Resources.

(4) “Friction surface” means an interior or exterior surface that is subject to abrasion or friction, including certain window, floor, and stair surfaces.

(5) “Impact surface” means an interior or exterior surface or fixture that is subject to damage by repeated impacts, for example, certain parts of door frames.

(6) “Inspection” means a surface by surface investigation to determine the presence of lead-based paint and the provision of a report explaining the results of the investigation.

(7) “Interim controls” means a measure or set of measures as specified by the board taken by the owner of a structure that are designed to control temporarily human exposure or likely exposure to lead-based paint hazards.

(8) “Lead-based paint” means paint or other surface coatings that contain lead in excess of limits established by board regulation.

(9) “Lead-based paint activities” means the inspection and assessment of lead hazards and the planning, implementation, and inspection of interim controls, renovation, and abatement activities at target housing and child-occupied facilities.

(10) “Lead-based paint hazard” means any condition that causes exposure to lead from lead contaminated dust, lead contaminated soil, or lead contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects as established pursuant to Section 403 of the Toxic Substances Control Act.

(11) “Lead contaminated dust” means surface dust in residential dwellings or in other facilities occupied or regularly used by children that contains an area or mass concentration of lead in excess of levels determined pursuant to Section 403 of the Toxic Substances Control Act.

(12) “Lead contaminated soil” means bare soil on residential real property or on other sites frequented by children that contains lead at or in excess of levels determined to be hazardous to human health pursuant to Section 403 of the Toxic Substances Control Act.

(13) “Lead contaminated waste” means any discarded material resulting from an abatement activity that fails the toxicity characteristics determined by the department.

(13.1) “Lead dust sampling technician” means an individual employed to perform lead dust clearance sampling for renovation as determined by the department.

(14) “Lead firm” means a company, partnership, corporation, sole proprietorship, association, or other business entity that employs or contracts with persons to perform lead-based paint activities.

(15) "Lead inspector" means a person who conducts inspections to determine the presence of lead-based paint or lead-based paint hazards.

(16) "Lead project designer" means a person who plans or designs abatement activities and interim controls.

(17) "Lead risk assessor" means a person who conducts on-site risk assessments of lead hazards.

(18) "Lead supervisor" means a person who supervises and conducts abatement of lead-based paint hazards.

(19) "Lead worker" means any person performing lead hazard reduction activities.

(19.1) "Minor repair and maintenance activities" means activities that disrupt six square feet or less of painted surface per room for interior activities or 20 square feet or less of painted surface for exterior activities where none of the work practices prohibited or restricted as determined by the department are used or where the work does not involve window replacement or demolition of painted surface areas. Jobs performed in the same room within 30 days are considered the same job for purposes of this definition.

(19.2) "Renovation" means the modification of any target housing or child-occupied facility structure or portion thereof, that results in the disturbance of painted surfaces unless that activity is performed as part of an abatement activity. Renovation includes but is not limited to the removal, modification, re-coating, or repair of painted surfaces or painted components; the removal of building components; weatherization projects; and interim controls that disturb painted surfaces. A renovation performed for the purpose of converting a building, or part of a building into target housing or a child-occupied facility is a renovation. Such term shall not include minor repair and maintenance activities.

(19.3) "Renovation firm" means a company, partnership, corporation, sole proprietorship or individual doing business, association, or other business entity that employs or contracts with persons to perform lead-based paint renovations as determined by the department.

(19.4) "Renovator" means an individual who either performs or directs workers who perform renovations.

(20) "Risk assessment" means an on-site investigation to determine and report the existence, nature, severity, and location of lead-based paint hazards in or on any structure or site, including:

(A) Information gathering regarding the age and history of the structure and the occupancy or other use by young children;

- (B) Visual inspection;
- (C) Limited wipe sampling or other environmental sampling techniques;
- (D) Other activity as may be appropriate; and
- (E) Provision of a report explaining the results of the investigation.

(21) “Target housing” means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child or children age six years or under resides or is expected to reside in such housing for the elderly or persons with disabilities) or any zero-bedroom dwelling. (Code 1981, § 31-41-3, enacted by Ga. L. 1994, p. 1617, § 1; Ga. L. 1998, p. 248, § 1; Ga. L. 2010, p. 531, § 6/SB 78; Ga. L. 2013, p. 135, § 12/HB 354.)

**The 2013 amendment**, effective July 1, 2013, substituted “child care learning centers” for “day-care centers” in the second sentence of paragraph (2.2).



## TITLE 32

### HIGHWAYS, BRIDGES, AND FERRIES

Chap.

2. Department of Transportation, 32-2-1 through 32-2-81.
5. Funds for Public Roads, 32-5-1 through 32-5-31.
6. Regulation of Maintenance and Use of Public Roads Generally, 32-6-1 through 32-6-248.

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#### CHAPTER 1

#### GENERAL PROVISIONS

##### 32-1-2. Purpose and legislative intent.

##### JUDICIAL DECISIONS

**County's duty to maintain dedicated roads in subdivision.** — Trial court erred by granting mandamus relief under O.C.G.A. § 9-6-20 with regard to a property owner seeking to compel a county to maintain roads in a subdivision because while the county had accepted dedication of the streets, the county still was vested with the discretion to decide

whether to open all of the roads or close any of the roads, and the trial court was required to determine whether the county's decisions were arbitrary, capricious, and unreasonable or a gross abuse of discretion as nowhere in the judgment was that standard articulated. *Burke County v. Askin*, 291 Ga. 697, 732 S.E.2d 416 (2012).

##### 32-1-3. Definitions.

##### JUDICIAL DECISIONS

**County's duty to maintain dedicated roads in subdivision.** — Trial court erred by granting mandamus relief under O.C.G.A. § 9-6-20 with regard to a property owner seeking to compel a county to maintain roads in a subdivision because while the county had accepted dedication of the streets, the county still was vested with the discretion to decide

whether to open all of the roads or close any of the roads, and the trial court was required to determine whether the county's decisions were arbitrary, capricious, and unreasonable or a gross abuse of discretion as nowhere in the judgment was that standard articulated. *Burke County v. Askin*, 291 Ga. 697, 732 S.E.2d 416 (2012).

CHAPTER 2

DEPARTMENT OF TRANSPORTATION

Article 3  
Officers

Sec. fined; procedures for utilization; limitation on contracting; summary projects.

Sec.  
32-2-41.2. Development of benchmarks; reports; value engineering studies.

Article 4

Exercise of Power to Contract  
Generally

32-2-81. "Design-build procedure" de-

ARTICLE 1  
GENERAL PROVISIONS

32-2-2. Powers and duties of department generally.

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

General Consideration

**Negligence suit involving paving company.** — Trial court erred by granting a paving company summary judgment in a negligence suit based on the affidavit of the company's president because the business records referred to and relied

upon by the paving company's president were not attached to the president's affidavit; thus, the affidavit could not be used to support the company's motion for summary judgment. *Brown v. Seaboard Constr. Co.*, 317 Ga. App. 667, 732 S.E.2d 325 (2012).

ARTICLE 3  
OFFICERS

32-2-41.2. Development of benchmarks; reports; value engineering studies.

- (a) The commissioner shall develop and publish in print or electronically benchmarks, based upon the type and scope of a construction project, that detail a realistic time frame for completion of each stage of a construction project, including preliminary engineering and design, environmental permitting and review, and right of way acquisition.
- (b) The director shall submit a semiannual report to the Governor, the Lieutenant Governor, the Speaker of the House of Representatives,

and the chairpersons of the House and Senate Transportation Committees detailing the progress of every construction project valued at \$10 million or more against the benchmarks. This report shall include an analysis explaining the discrepancies between the benchmarks and actual performance on each project as well as an explanation for delays. This report shall also be published on the website of the department.

(c) The department shall create and maintain on its website a detailed status report on each project under planning or construction. This status report shall include, but not be limited to, the name and contact information of the project manager, if applicable.

(d) Value engineering studies shall be performed on all projects whose costs exceed \$50 million, except for any project procured in accordance with Code Sections 32-2-79, 32-2-80, and 32-2-81, and the director shall submit an annual report to the Governor, the Lieutenant Governor, the Speaker of the House of Representatives, and the chairpersons of the House and Senate Transportation Committees detailing the amount saved due to the value engineering studies. This report shall also be published on the website of the department. (Code 1981, § 32-2-41.2, enacted by Ga. L. 2008, p. 806, § 1/SB 417; Ga. L. 2009, p. 976, § 7/SB 200; Ga. L. 2010, p. 838, § 10/SB 388; Ga. L. 2013, p. 67, § 1/HB 202.)

**The 2013 amendment**, effective July 1, 2013, in the first sentence of subsection (d), substituted “\$50 million” for “\$10 mil-

lion” and inserted “except for any project procured in accordance with Code Sections 32-2-79, 32-2-80, and 32-2-81,”.

## ARTICLE 4

### EXERCISE OF POWER TO CONTRACT GENERALLY

#### **32-2-81. “Design-build procedure” defined; procedures for utilization; limitation on contracting; summary projects.**

(a) As used in this Code section, the term “design-build procedure” means a method of contracting under which the department contracts with another party for the party to both design and build the structures, facilities, systems, and other items specified in the contract.

(b) The department may use the design-build procedure for buildings, bridges and approaches, rail corridors, technology deployments, and limited or controlled access projects or projects that may be constructed within existing rights of way where the scope of work can be clearly defined or when a significant savings in project delivery time can be attained.

(c) When the department determines that it is in the best interests of the public, the department may combine any or all of the environmental

services, utility relocation services, right of way services, design services, and construction phases of a public road or other transportation purpose project into a single contract using a design-build procedure. Design-build contracts may be advertised and awarded notwithstanding the requirements of paragraph (1) of subsection (d) of Code Section 32-2-61. However, construction activities shall not begin on any portion of such projects until title to the necessary rights of way and easements for the construction of that portion of the project has vested in the state or a local governmental entity and all railroad crossing and utility agreements have been executed.

(d) The department shall adopt by rule procedures for administering design-build contracts. Such procedures shall include, but not be limited to:

- (1) Prequalification requirements;
- (2) Public advertisement procedures;
- (3) Request for qualification requirements;
- (4) Request for proposal requirements;
- (5) Criteria for evaluating technical information and project costs;
- (6) Criteria for selection and award process, provided that the rules shall specify that the criteria for selection shall consist of the following minimum two components for any two-step procurement process:

(A) A statement of qualifications from which the department will determine a list of qualified firms for the project, provided that, if the department determines it is in the state's best interest, it may omit this requirement and move directly to a one-step procurement process through the issuance of a request for proposal from which the department may select the lowest qualified bidder; and

(B) From the list of qualified firms as provided in subparagraph (A) of this paragraph, a technical proposal and a price proposal from each firm from which the department shall select the lowest qualified bidder or, in the event the department uses the best value procurement process, the request for proposal shall specify the requirements necessary for the selection of the best value proposer which shall include, at a minimum, a weighted cost component and a technical component. A proposal shall only be considered nonresponsive if it does not contain all the information and level of detail requested in the request for proposal. A proposal shall not be deemed to be nonresponsive solely on the basis of minor irregularities in the proposal that do not directly affect the ability to fairly evaluate the merits of the proposal. Notwithstanding the require-



ments of Code Section 36-91-21, under no circumstances shall the department use a “best and final offer” standard in awarding a contract in order to induce one proposer to bid against an offer of another proposer. The department may provide for a stipulated fee to be awarded to the short list of qualified proposers who provide a responsive, successful proposal. In consideration for paying the stipulated fee, the department may use any ideas or information contained in the proposals in connection with the contract awarded for the project, or in connection with a subsequent procurement, without obligation to pay any additional compensation to the unsuccessful proposers;

(7) Identification of those projects that the department believes are candidates for design-build contracting; and

(8) Criteria for resolution of contract issues. The department may adopt a method for resolving issues and disputes through negotiations at the project level by the program manager up to and including a dispute review board procedure with final review by the commissioner or his or her designee. Regardless of the status or disposition of the issue or dispute, the design-builder and the department shall continue to perform their contractual responsibilities. The department shall have the authority to suspend or provide for the suspension of Section 108 of the department’s standard specifications pending final resolution of such contract issues and disputes. This paragraph shall not prevent an aggrieved party from seeking judicial review.

(e) In contracting for design-build projects, the department shall be limited to contracting for no more than 50 percent of the total amount of construction projects awarded in the previous fiscal year.

(f) Not later than 90 days after the end of the fiscal year, the department shall provide to the Governor, Lieutenant Governor, Speaker of the House of Representatives, and chairpersons of the House and Senate Transportation Committees a summary containing all the projects awarded during the fiscal year using the design-build contracting method. Included in the report shall be an explanation for projects awarded to other than the low bid proposal. This report shall be made available for public information. (Code 1981, § 32-2-81, enacted by Ga. L. 2004, p. 905, § 2; Ga. L. 2005, p. 950, § 1/HB 530; Ga. L. 2009, p. 8, § 32/SB 46; Ga. L. 2010, p. 396, § 1/SB 305; Ga. L. 2012, p. 1343, § 4/HB 817; Ga. L. 2013, p. 68, § 1/SB 70.)

**The 2013 amendment**, effective July 1, 2013, in subsection (a), inserted “systems,” near the end; in subsection (b), inserted “technology deployments,” near the middle; in subsection (c), inserted

“utility relocation services,” in the first sentence and substituted “activities shall” for “activities may” in the third sentence; deleted former paragraph (d)(3), which read: “Scope of service requirements;” re-

designated former paragraphs (d)(4) through (d)(9) as present paragraphs (d)(3) through (d)(8), respectively; in paragraph (d)(3), substituted “Request for qualification requirements” for “Letters of interest requirements”; rewrote paragraph (d)(4); added “for any two-step procurement process” at the end of paragraph (d)(6); added the proviso in subparagraph (d)(6)(A); rewrote subparagraph (d)(6)(B); in paragraph (d)(7), deleted “, with the understanding that in general this type of contract should have minimal right of way or utility issues which are unresolved; provided, however, the failure of the de-

partment to identify such projects does not prevent the department from using design-build contracting in extraordinary circumstances including emergency work, unscheduled projects, or where loss of funding might occur” following “contracting”; in paragraph (d)(8), substituted “paragraph shall” for “paragraph does” in the last sentence; deleted former subsection (e); redesignated former subsections (f) and (g) as present subsections (e) and (f), respectively; and substituted “chairpersons” for “chairmen” in the first sentence of subsection (f).

CHAPTER 3

ACQUISITION OF PROPERTY FOR TRANSPORTATION PURPOSES

ARTICLE 1

GENERAL PROVISIONS

32-3-11. Power of judge to set aside, vacate, and annul declaration of taking; issuance and service on condemnor of rule nisi; hearing.

**Law reviews.** — For annual survey on real property, see 64 Mercer L. Rev. 255 (2012).

JUDICIAL DECISIONS

**Application of 60-day requirement.** — Pursuant to the clear language of O.C.G.A. § 32-3-11(c), it is the duty of the court, not the condemnee, to issue a rule nisi and schedule the required hearing. The Supreme Court of Georgia disap-

proves of the portion of *Lopez-Aponte v. City of Columbus*, 267 Ga. App. 65 (2004), which places the burden of issuing a rule nisi and obtaining a timely hearing upon the condemnee. *Adkins v. Cobb County*, 291 Ga. 521, 731 S.E.2d 665 (2012).

CHAPTER 4

STATE, COUNTY, AND MUNICIPAL ROAD SYSTEMS

ARTICLE 3

COUNTY ROAD SYSTEMS

PART 1

GENERAL POWERS AND DUTIES OF COUNTIES

32-4-41. Duties.

JUDICIAL DECISIONS

**Duty to maintain dedicated roads in subdivision.** — Trial court erred by granting mandamus relief under O.C.G.A. § 9-6-20 with regard to a property owner seeking to compel a county to maintain roads in a subdivision because while the county had accepted dedication of the streets, the county still was vested with the discretion to decide whether to open all of the roads or close any of the roads, and the trial court was required to determine whether the county’s decisions were arbitrary, capricious, and unreasonable or a gross abuse of discretion as nowhere in the judgment was that standard articulated. *Burke County v. Askin*, 291 Ga. 697, 732 S.E.2d 416 (2012).

ARTICLE 4

MUNICIPAL STREET SYSTEMS

PART 1

GENERAL POWERS AND DUTIES OF MUNICIPALITY

32-4-93. Liability of municipalities for defects in public roads.

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

General Consideration

**No evidence of city liability.** — Trial court did not err by dismissing a pedestrian’s slip and fall claims against a city because there was no evidence that the city owned any part of the sidewalk and no evidence that the city performed any maintenance, repairs, or renovations to the sidewalk; thus, the pedestrian presented no evidence to support the contention that the city had or breached a duty to maintain the sidewalk. *Hagan v. Ga. DOT*, No. A12A2412, 2013 Ga. App. LEXIS 237 (Mar. 20, 2013).

CHAPTER 5

FUNDS FOR PUBLIC ROADS

Article 3	Sec.	
Allocation of Funds		funds; items excluded from budgeting; budgeting periods; authorization of reduction of funds allocated.
Sec.		
32-5-30.	Allocation of state and federal	

ARTICLE 3

ALLOCATION OF FUNDS

32-5-30. Allocation of state and federal funds; items excluded from budgeting; budgeting periods; authorization of reduction of funds allocated.

(a)(1) The total of expenditures from the State Public Transportation Fund under paragraphs (4), (5), and (6) of Code Section 32-5-21 plus expenditures of federal funds appropriated to the department shall be budgeted by the department over two successive budgeting periods every decade. However, such budgeting shall not include:

(A) Any federal funds specifically designated for projects that have been earmarked by a member of Congress in excess of appropriated funds;

(B) Any funds for a project undertaken for purposes of providing for the planning, surveying, constructing, paving, and improving of The Dwight D. Eisenhower System of Interstate and Defense Highways within the state; or

(C) Any funds for a project undertaken for purposes of providing for the planning, surveying, constructing, paving, and improving of any part of the state designated freight corridor, when such designation is made by the director of planning with approval from a majority of the board.

(2) The first budgeting period shall commence immediately following redistricting of congressional districts and shall be for a duration of five years. The second budgeting period shall continue until the beginning of the budgeting period following the next redistricting of congressional districts after each decennial census; provided, however, if the congressional districts have been redrawn prior to a new decennial census, but after the approval of an existing map based on the last decennial census, the budgeting period shall include two successive budgeting periods. The first budgeting period shall end upon approval of the new redistricting and the second budgeting



period shall commence from the date such redrawn congressional districts have been approved and shall continue until the next budgeting period following the next redistricting of congressional districts. The department shall budget such expenditures such that at the end of such budgeting period funding obligations equivalent to at least 80 percent of such total for such budgeting period shall have been divided equally among the congressional districts in this state, as those districts existed at the commencement of such budgeting period, for public road and other public transportation purposes in such districts.

(b)(1) The board may upon approval by two-thirds of its membership authorize a reduction in the share of funds allocated pursuant to this Code section to any such congressional district if such supermajority of the board determines that such district does not have sufficient projects available for expenditure of funds within that district to avoid lapsing of appropriated funds.

(2) In the event that funding becomes available to the department which could not otherwise be allocated among congressional districts due to the allocation requirements of this Code section, the board may upon approval by a majority of its membership authorize a waiver of such allocation requirements to the extent necessary to allow the expenditure of such funding, and any project, projects, or portion thereof undertaken with such additional funding shall be in addition to those projects funded in accordance with the allocation requirements of this Code section in the fiscal year in which the additional funds became available or any subsequent year; provided, however, that any such waiver shall be valid only for the fiscal year in which it is granted, and any funds budgeted pursuant to a waiver granted by this paragraph which were not obligated by the end of such fiscal year shall not be obligated in violation of the allocation requirements of this Code section in a subsequent fiscal year unless a majority of the board again authorizes a waiver of the allocation requirements in such subsequent fiscal year.

(c) Provisions of this Code section may be waived pursuant to subsection (b) of Code Section 32-5-1 only upon approval by two-thirds of the membership of the board. (Code 1981, § 32-5-30, enacted by Ga. L. 1999, p. 112, § 2; Ga. L. 2000, p. 1483, § 1; Ga. L. 2001, p. 4, § 32; Ga. L. 2002, p. 1490, § 1; Ga. L. 2005, p. 724, § 1/SB 4; Ga. L. 2006, p. 72, § 32/SB 465; Ga. L. 2009, p. 8, § 32/SB 46; Ga. L. 2013, p. 67, § 2/HB 202.)

**The 2013 amendment**, effective July 1, 2013, substituted the present provisions of paragraph (a)(1) for the former provisions, which read: "The total of ex-

penditures from the State Public Transportation Fund under paragraphs (4), (5), and (6) of Code Section 32-5-21 plus expenditures of federal funds appropriated

to the department, not including any federal funds specifically designated for projects that have been earmarked by a member of Congress in excess of appropriated funds, shall be budgeted by the department over two successive budgeting periods every decade.”

CHAPTER 6

REGULATION OF MAINTENANCE AND USE OF  
PUBLIC ROADS GENERALLY

Article 2

Dimensions and Weight of Vehicles  
and Loads

Sec.

32-6-28. Permits for excess weight and dimensions.

ARTICLE 2

DIMENSIONS AND WEIGHT OF VEHICLES AND LOADS

32-6-28. Permits for excess weight and dimensions.

(a) Generally.

(1)(A) The commissioner or an official of the department designated by the commissioner may, in his or her discretion, upon application in writing and good cause being shown therefor, issue a permit in writing authorizing the applicant to operate or move upon the state’s public roads a motor vehicle or combination of vehicles and loads whose weight, width, length, or height, or combination thereof, exceeds the maximum limit specified by law, provided that the load transported by such vehicle or vehicles is of such nature that it is a unit which cannot be readily dismantled or separated; and provided, further, that no permit shall be issued to any vehicle whose operation upon the public roads of this state threatens to unduly damage a road or any appurtenance thereto, except that the dismantling limitation specified in this Code section shall not apply to loads which consist of cotton, tobacco, concrete pipe, and plywood that do not exceed a width of nine feet or of round bales of hay that do not exceed a width of 11 feet and which are not moved on part of The Dwight D. Eisenhower System of Interstate and Defense Highways. However, vehicles transporting portable buildings and vehicles not exceeding 65 feet in length transporting boats on roads not a part of The Dwight D. Eisenhower System of Interstate and Defense Highways, regardless of

whether the nature of such buildings or boats is such that they can be readily dismantled or separated, may exceed the lengths and widths established in this article, provided that a special permit for such purposes has been issued as provided in this Code section, but no such special permit shall be issued for a load exceeding 12 feet in width when such load may be readily dismantled or separated. A truck tractor and low boy type trailer may, after depositing its permitted load, return to its point of origin on the authorization of its original permit.

(B) Notwithstanding the provisions of subparagraph (A) of this paragraph, the commissioner or an official of the department designated by the commissioner may, in his or her discretion, upon application in writing and good cause being shown therefor, issue to a specific tow vehicle a permit in writing authorizing the applicant to operate or move upon the state's public roads a motor vehicle or combination of vehicles and loads for transporting not more than two modular housing units or sectional housing units if the total weight, width, length, and height of the vehicle or combination of vehicles, including the load, does not exceed the limits specified in Code Sections 32-6-22 and 32-6-26. Permission to transport two modular housing units is only authorized when the modular unit transporter meets the minimum specifications contained in subparagraph (C) of this paragraph. No permit shall be issued to any vehicle or combination of vehicles whose operation upon the public roads of this state threatens the safety of others or threatens to damage unduly a road or any appurtenance thereto.

(C) A modular unit transporter shall meet all requirements of the Federal Motor Carrier Safety Administration and all state safety requirements, rules, and regulations. The modular unit transporter shall be properly registered and have a proper, current license plate. At a minimum, the modular unit transporter shall:

- (i) Be constructed of 12 inch steel I beams doubled and welded together;
- (ii) Have all axles equipped with brakes;
- (iii) Have every floor joist on each modular section securely attached to the beams with lag bolts and washers, or lag bolts, washers, and cable winches; and
- (iv) Have an overall length not to exceed 80 feet including the hitch.

(2) Permits may be issued, on application to the department, to persons, firms, or corporations without specifying license plate numbers in order that such permits which are issued on an annual basis

may be interchanged from vehicle to vehicle. The department is authorized to promulgate reasonable rules and regulations which are necessary or desirable to govern the issuance of such permits, provided that such rules and regulations are not in conflict with this title or other provisions of law.

(3) Every such permit shall be carried in the vehicle or combination of vehicles to which it refers and shall be open to inspection by any police officer, state trooper, or authorized agent of the department.

(4) The application for any such permit shall describe the type of permit applied for, as said types of permits are described in subsection (c) of this Code section. In addition, the application for a single-trip permit shall describe the points of departure and destination.

(5) The commissioner or an official of the department designated by the commissioner is authorized to withhold such permit or, if such permit is issued, to establish seasonal or other time limitations within which the vehicles described may be operated on the public road indicated, or otherwise to limit or prescribe conditions of operation of such vehicles when necessary to ensure against undue damage to the road foundation, surfaces, or bridge structures, and to require such undertaking or other security as may be deemed necessary to compensate the state for any injury to any roadway or bridge structure.

(6) For just cause, including, but not limited to, repeated and consistent past violations, the commissioner or an official of the department designated by the commissioner may refuse to issue or may cancel, suspend, or revoke the permit and any permit privileges of an applicant or permittee. The specific period of time of any suspension shall be determined by the department. In addition, any time the restrictions or conditions within which a permitted vehicle must be operated are violated, the permit may be immediately declared null and void.

(7) The department is authorized to promulgate rules and regulations necessary to enforce the suspension of permits authorized in this Code section.

(8) The department shall issue rules to establish a driver training and certification program for drivers of vehicles escorting oversize/overweight loads. Any driver operating a vehicle escorting an oversize/overweight load shall meet the training requirements and obtain certification under the rules issued by the department pursuant to this Code section. The rules may provide for reciprocity with other states having a similar program for escort certification. Certification



credentials of the driver of an escort vehicle shall be carried in the escort vehicle and be readily available for inspection by law enforcement personnel or an authorized employee of the department. The department shall implement the vehicle escort driver training and certification program on or before July 1, 2010, and the requirements for training and certification shall be enforced beginning on January 1, 2011.

(9) Permit holders shall be required to meet the following minimum insurance standards:

(A) For loads where the gross vehicle weight is less than or equal to 10,000 pounds:

(i) For bodily injury a limit of \$50,000.00 per person for injury or death as a result of any one occurrence; and

(ii) For property damage a limit of \$50,000.00 for damage to property of others in any one occurrence; or

(B) For commercial motor carriers where the gross vehicle weight is greater than 10,000 pounds:

(i) For bodily injury a minimum of \$300,000.00 for each person and \$1 million for multiple persons for injury or death as a result of any one occurrence; and

(ii) For property damage a minimum of \$1 million for damage to property of others in any one occurrence.

**(b) Duration and limits of permits.**

(1) **Annual permit.** The commissioner or an official of the department designated by the commissioner may, pursuant to this Code section, issue an annual permit which shall permit a vehicle to be operated on the public roads of this state for 12 months from the date the permit is issued even though the vehicle or its load exceeds the maximum limits specified in this article. However, except as specified in paragraph (2) of this subsection, an annual permit shall not authorize the operation of a vehicle:

(A) Whose total gross weight exceeds 100,000 pounds;

(B) Whose single axle weight exceeds 25,000 pounds;

(C) Whose total load length exceeds 100 feet;

(D) Whose total width exceeds 102 inches or whose load width exceeds 144 inches; or

(E) Whose height exceeds 14 feet and six inches.

(2) **Annual permit plus.** Vehicles and loads that meet the requirements for an annual permit may apply for a special annual

permit to carry wider loads on the NHS. The wider load limits shall be a maximum of 14 feet wide from the base of the load to a point 10 feet above the pavement and 14 feet and eight inches for the upper portion of the load.

(3) **Annual commercial wrecker emergency tow permit.** Pursuant to this Code section, the commissioner may issue an annual permit for vehicles towing disabled, damaged, abandoned, or wrecked commercial vehicles, including combination vehicles, even though such wrecker or its load exceeds the maximum limits specified in this article. An annual commercial wrecker emergency tow permit shall not authorize the operation of a vehicle:

(A) Whose single axle weight exceeds 25,000 pounds;

(B) Whose load on one tandem axle exceeds 50,000 pounds and whose load on any secondary tandem axle exceeds 38,000 pounds;  
or

(C) Whose total load length exceeds 125 feet.

(4) **Six-month permit.** Six-month permits may be issued for loads of tobacco or unginned cotton the widths of which do not exceed nine feet, provided that such loads shall not be operated on The Dwight D. Eisenhower System of Interstate and Defense Highways.

(5) **Single trip.** Pursuant to this Code section, the commissioner may issue a single-trip permit to any vehicle or load allowed by federal law.

(6) **Multitrip.** Pursuant to this Code section, the commissioner may issue a multitrip permit to any vehicle or load allowed by federal law. A multitrip permit authorizes the permitted load to return to its original destination on the same permit, if done so within ten days, with the same vehicle configuration, and following the same route, unless otherwise specified by the department. A multitrip permit authorizes unlimited permitted loads on the same permit, if done so within the allowable ten days, with the same vehicle configuration, and following the same route.

(c) **Fees.** The department may promulgate rules and regulations concerning the issuance of permits and charge a fee for the issuance thereof as follows:

(1) **Annual.** Charges for the issuance of annual permits shall be \$150.00 per permit.

(2) **Annual permit plus.** Charges for the issuance of annual permits plus shall be \$500.00 per permit.

(3) **Annual commercial wrecker emergency tow permit.** Charges for the issuance of annual commercial wrecker emergency tow permits shall be \$500.00 per permit.

(4) **Six months.** The charges for the issuance of six-month permits for loads of tobacco or unginned cotton shall be \$25.00 per permit.

(5) **Single trip.** Charges for the issuance of single-trip permits shall be as follows:

(A) Any load not greater than 16 feet wide, not greater than 16 feet high, and not weighing more than 150,000 pounds or any load greater than 100 feet long which does not exceed the maximum width, height, and weight limits specified by this subparagraph ..... \$ 30.00

(B) **Superload permit.** Any load having a width, height, or weight exceeding the maximum limit therefor specified in subparagraph (A) of this paragraph and not weighing more than 180,000 pounds ..... 125.00

(C) **Superload plus permit.** Any load having a weight exceeding the maximum limit therefor specified in subparagraph (B) of this paragraph ..... 500.00

(6) **Multitrip.** Charges for the issuance of multitrip permits shall be \$100.00 for any load not greater than 16 feet wide, not greater than 16 feet high, and not weighing more than 150,000 pounds or any load greater than 100 feet long which does not exceed the maximum width, height, and weight limits specified by this paragraph.

(d) Notwithstanding any provision of Code Section 48-2-17 to the contrary, all fees collected in accordance with this Code section shall be paid to the treasurer of the department to help defray the expenses of enforcing the limitations set forth in this article and may also be used for public road maintenance purposes in addition to any sums appropriated therefor to the department. (Ga. L. 1968, p. 30, § 1; Ga. L. 1969, p. 637, § 1; Ga. L. 1971, p. 43, § 1; Ga. L. 1971, p. 462, §§ 2, 3; Ga. L. 1972, p. 356, §§ 1, 2; Code 1933, § 95A-961, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1974, p. 1422, § 38; Ga. L. 1975, p. 400, § 1; Ga. L. 1979, p. 439, § 4; Ga. L. 1980, p. 576, § 7; Ga. L. 1982, p. 3, § 32; Ga. L. 1983, p. 1798, § 5; Ga. L. 1986, p. 471, §§ 1-3; Ga. L. 1986, p. 655, § 1; Ga. L. 1987, p. 846, § 1; Ga. L. 1992, p. 987, § 1; Ga. L. 1992, p. 2467, §§ 2-4; Ga. L. 1993, p. 348, § 1; Ga. L. 1995, p. 10, § 32; Ga. L. 1995, p. 155, § 1; Ga. L. 1996, p. 1010, § 3; Ga. L. 1996, p. 1512, § 3A; Ga. L. 1999, p. 567, § 3; Ga. L. 2000, p. 136, § 32; Ga. L. 2000, p. 1654, § 2; Ga. L. 2002, p. 1126, §§ 5, 6; Ga. L. 2010, p. 442, § 3/ HB 1174; Ga. L. 2011, p. 548, §§ 3, 4/ SB 54; Ga. L. 2012, p. 732, § 1/ HB 835; Ga. L. 2012, p. 775, § 32/ HB 942; Ga. L. 2013, p. 738, § 1/ SB 218.)

**The 2013 amendment,** effective July 1, 2013, in the introductory language of paragraph (b)(3), inserted “abandoned,” and inserted “, including combination vehicles,” in the first sentence, and substituted “An annual” for “However, an annual” at the beginning of the second sentence; substituted “25,000 pounds” for

“21,000 pounds” in subparagraph (b)(3)(A); and substituted “one tandem axle exceeds 50,000 pounds and whose load on any secondary tandem axle exceeds 38,000 pounds” for “any tandem axle exceeds 40,000 pounds” in subparagraph (b)(3)(B).

## ARTICLE 3

### CONTROL OF SIGNS AND SIGNALS

#### PART 2

#### STATE HIGHWAY SYSTEM

#### 32-6-70. Declaration of policy.

**Law reviews.** — For annual survey on business corporations, see 64 Mercer L. Rev. 61 (2012).

#### 32-6-75. Restrictions on outdoor advertising authorized by Code Sections 32-6-72 and 32-6-73; multiple message signs on interstate system, primary highways, and other highways.

**Law reviews.** — For annual survey on administrative law, see 64 Mercer L. Rev. 39 (2012).

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## CHAPTER 7

### ABANDONMENT, DISPOSAL, OR LEASING OF PROPERTY NOT NEEDED FOR PUBLIC ROAD PURPOSES

#### 32-7-3. Authority of department, counties, and municipalities to dispose of property no longer needed for public road purposes.

#### JUDICIAL DECISIONS

**Application.** — Trial court properly granted summary judgment to a county and purchaser, because the prior owner of the property condemned by the county never had a binding contract with the county to re-purchase a remnant, unused portion and there was no conflict between O.C.G.A. §§ 32-7-3, 32-7-4, and 36-9-3(h) and the county’s code amendment. *Hubert Props., LLP v. Cobb County*, 318 Ga. App. 321, 733 S.E.2d 373 (2012).



**32-7-4. Procedure for disposition of property.****JUDICIAL DECISIONS**

**Application.** — Trial court properly granted summary judgment to a county and purchaser because the prior owner of the property condemned by the county never had a binding contract with the county to re-purchase a remnant, unused

portion and there was no conflict between O.C.G.A. §§ 32-7-3, 32-7-4, and 36-9-3(h) and the county's code amendment. *Hubert Props., LLP v. Cobb County*, 318 Ga. App. 321, 733 S.E.2d 373 (2012).

